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A COMPENDIUM

BY

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BOTH OF LINCOLN'S INN, BARRISTERS-AT-LAW,

OF THE

PRECEDENTS IN CONVEYANCING

BY THE LATE

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BARRISTERS-AT-LAW.

IN TWO VOLUMES.

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PREFACE.

This Compendium of Precedents is the outcome of suggestions made from various sources to the publishers that there is a call for a handy book of precedents comprising such of the simpler forms as are constantly required in ordinary practice, and rendered more easy of manipulation by the less experienced draftsman by reason of each precedent being, so far as space would allow, complete in itself. Keeping this main object in view, it was thought that selections from the well-known forms of Bythewood and Jarman, amended and supplemented, where necessary, to bring them up to date, would constitute an excellent foundation for such a new handy book as was suggested. It is upon this foundation that the present work has been constructed, and it will be seen that the chief features of this edition are:—

(1) The omission of lengthy dissertations and notes, and of forms relating to transactions of a complicated or specially technical nature, *e.g.*, company forms generally; agreements between railway companies as to running powers or other matters; dealings with patents, trade-marks, or copyright.

(2) Each precedent is made, as far as space would allow, complete in itself. For obvious reasons an exception had to be made in the case of Conditions of Sale, and of Wills.

(3) Endeavour has been made to shorten the forms

by the omission of all superfluous words, and following modern usage, wherever possible and convenient, of descriptive words such as "vendor" and "purchaser," "borrower" and "lender," are used to avoid the repetition of the full names of the parties.

(4) All abbreviations in the text are avoided in order to simplify the work of the copying clerk and avoid the mistakes so commonly occurring from the use of an abbreviated text book by an inexperienced clerk.

(5) Each volume is provided with a single index of notes and forms. This index has been very carefully prepared by Mr. Humphrey G. A. Baker, of the Equity Bar, whose previous experience had rendered him especially capable of undertaking this very arduous task in a scientific manner. The Editor desires to express his sincere thanks to Mr. Baker for relieving him of this difficult and all-important work.

From the foregoing explanation of the purport and nature of the present work, it will appear quite plainly that though based upon and for the most part derived from the well-known Compendium of Bythewood and Jarman —which was first published in the years 1821 to 1834 in ten volumes, and the last Edition of which in seven volumes was issued between the years 1884 to 1890— it is not strictly speaking a new Edition of that work. Nor does it aspire to compete with the more elaborate and comprehensive collections of forms now in common use, such as Key and Elphinstone's Compendium of Precedents. The Editor has, in fact, in order to keep the volumes within the allotted space, availed himself to a considerable extent of the notes contained in the last-mentioned work by frequent reference thereto in the notes to this Compendium.

Since this work was in the press the Execution of Trusts (War Facilities) Act, 1914, has been passed. This Act, though in the nature of an emergency Act in that its provisions are limited to the duration of the War, may be frequently made use of by trustees engaged in War Service, and many titles may in the future be affected thereby. Very careful consideration should therefore be given to this Act. (See *Addenda*.)

Regard should also be had to the restrictions placed by the Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), on mortgagees and others in the enforcement of their remedies during the War, except after application to such Court and such notice as might be provided by rules under the Act. The provision is made by the Courts (Emergency Powers) Rules, 1914.

Part III. (sects. 12—16) of the Finance Act, 1914, contains very important provisions relating to death duties, amending the rates and, in certain cases, reducing the amount of estate duty, abolishing settlement estate duty in the case of persons dying after the 11th May 1914, giving relief in respect of quick succession where property consists of land or a business, and protecting purchasers and mortgagees of interests in expectancy. Where questions as to death duties arise these provisions should be carefully considered and kept in mind.

The present War makes the subject of the execution of wills by soldiers and sailors on active service and of nuncupative wills generally (see *Addendum* to Vol. 2) of more than usual importance.

The Editor has received much valuable assistance from Mr. D. C. L. Cree, both in the compilation of portions of the work and in the revision of the proofs generally.

The Editor also wishes to thank Sir Howard Elphinstone, Bart., and Mr. Frederick Trentham Maw, the learned Editors of Key and Elphinstone's Compendium of Precedents, for many valuable suggestions of which he has taken advantage.

C. E. C.

Lincoln's Inn,
February, 1915.

P.S.—In addition to the provisions of the Finance Act, 1914, referred to on the preceding page, it should have been mentioned that by sect. 14 the relief from estate duty given by sect. 5 (2) and sect. 21 (1) of the Finance Act, 1894, is abolished in the case of any person dying after the 15th of August, 1914.

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ADDENDA.

Page 35, note (*t*), line 4.—After *Collins* v. *Lock*, 4 App. Cas. at p. 686, *add* "and *Goldsoll* v. *Goldman*, [1914] 2 Ch. 603; 59 Sol. J. 41."

„ 39, note (*y*).—After *Greenhalgh* v. *Brindley*, *add* "followed in *Smith* v. *Colbourne*, [1914] 2 Ch. 533.

„ 98, note (*q*), line 7.—After P. T. A. 1906, s. 2, *add* "or the trusteeship of a foreign (including a Scotch) settlement," *Re Hewitt's S.*, [1915] 1 Ch. 228.

„ 136.—After the second paragraph, *add* "The Execution of Trusts (War Facilities) Act, 1914 (5 Geo. V. c. 13), enables a trustee engaged on war service in connection with the present war by power of attorney to delegate to any person capable of being appointed to be a trustee of the trust the execution during any period for which he is so engaged, and a further period of one month thereafter of any trust of which he is trustee; And a statutory declaration by the donee of the power that the donor is on war service within the meaning of the Act is to be sufficient evidence of the fact."

„ 209, note (*oo*).—After *Millbourne* v. *Lyons*, *add* "now reported [1914] 2 Ch. 231; 83 L. J. (Ch.) 737; 111 L. T. 388. See also *Mayner* v. *Payne*, [1914] 2 Ch. 555; 83 L. J. (Ch.) 897; 111 L. T. 375."

„ 380, note (*v*).—As to the power of a trustee mortgagee to release part of his security on receipt of the whole of the purchase-money, see *Re Morrell and Chapman's Contract*, [1915] 1 Ch. 162.

„ 397, note (*k*).—After *Re Gallard*, *add* "see now Bankruptcy Rules, 1915, r. 347."

„ 410, note (*d*).—See *Smith* v. *Colbourne*, [1914] 2 Ch. 533.

„ 523, note (*e*).—*Bodega* v. *Read*, now reported [1914] 2 Ch. 757; 59 S. J. 58.

AGREEMENTS.

PRELIMINARY NOTE.

By sect. 4 of the Statute of Frauds (29 Car. II. c. 3), no action can be brought upon any agreement that is not to be performed within one year from the making thereof unless such agreement, or some memorandum thereof, be in writing, signed by the party to be charged therewith or some other person thereunto by him lawfully authorised. Some of the following precedents are of agreements to be performed within one year, others are for a more extended period, but they are all such as are usually under hand and signed by the contracting parties or their agents. As to what agreements are within sect. 4 of the Statute of Frauds see *Britain* v. *Rossiter,* L. R. 11 Q. B. D. 123; *Maddison* v. *Alderson,* 8 App. Cas. 467; *Hanau* v. *Ehrlich,* [1912] A. C. 39; *Smith* v. *Gold Coast, &c., Ltd.,* [1903] 1 K. B. 285, 538; *Reeve* v. *Jennings,* [1910] 2 K. B. 522; and *Lavalette* v. *Riches & Co.,* 24 L. T. R. 336, discussed 52 Sol. J. 276.

The Schedule to the Stamp Act, 1891, contains the following provisions as to the stamping of agreements other than agreements mentioned under the headings of "Mortgage," "Lease on Tack," "Conveyance on Sale":—

	£	*s.*	*d.*
AGREEMENT or CONTRACT made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways	0	0	6

	£	s.	d.
AGREEMENT or any MEMORANDUM of an AGREEMENT, made in England or Ireland under hand only, or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument	0	0	6

Exemptions.

(1) Agreement or memorandum the matter whereof is not of the value of 5*l*.

(2) Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant.

(3) Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise.

(4) Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.

(5) Agreement entered into between a landlord and tenant pursuant to sub-section six of section eight or sub-section two of section twenty of the Land Law (Ireland) Act, 1881.

See, too, sects. 22 and 23 of the Act.

By sect. 7 of the Finance Act, 1907, it is provided that the exemption numbered (3) shall not apply to hire-purchase agreements.

As to agreements under seal see Sched. to the Stamp Act, 1891, under heading "Bond, Covenant, &c."

PRECEDENTS.

I. TO PULL DOWN AND REBUILD A HOUSE, &C.

I. AGREEMENT *with a* BUILDER *to* PULL DOWN *existing* HOUSE, *&c., and* RE-BUILD, *where an* ARCHITECT *is employed* (*a*).

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN [*builder*], of, &c. (hereinafter called "the builder"), of the one part; and [*owner*], of, &c. (hereinafter called "the owner"), of the other part. WHEREBY IT IS AGREED as follows:— Parties.

1. Licence is hereby granted to the builder to enter upon the piece of ground hereinafter described for the purpose only of performing this contract. Licence to enter.

2. The builder shall at his own cost pull down and remove the house and buildings now standing upon a piece of ground belonging to the owner, and situate and being No. ——, in —— Street, in the parish of ——, in the county of ——, and erect, build, and completely cover in and finish upon the said piece of ground, in a good, substantial, and workmanlike manner, and with the best materials, a house and other buildings according to the plans and specifications which have been signed by the builder and by [*architect*], the architect of the owner, under the direction and to the satisfaction in every respect of the said [*architect*] or other the architect for the time being of the owner (hereinafter referred to as the architect). Builder to pull down and remove existing buildings and to erect new buildings according to plans, &c.

3. The builder shall forthwith commence the said works and uninterruptedly carry on the same until completion, and the said works shall be completed, and the said house and buildings finished and covered in and made fit for habitation and use, within —— calendar months from the date of this agreement. [Provided that in the event of any delay arising from fire or tempest or other inevitable cause, or from any strike or lock-out (*b*) in the Completion. Further time allowance in certain events.

(*a*) A contract for building a house is not a contract relating to land or for the sale of goods within the Statute of Frauds, and unless it is not to be performed within the year may be by parol, and if made in writing may be subsequently varied by parol. If under hand only, it will require a 6*d.* stamp.

The form of building contract adopted by the R. I. B. A. is given in the Encyclop. of Forms, vol. 12, p. 587.

(*b*) As to the meaning of "strike," see *Farrer* v. *Close*, L. R. 4 Q. B.

I. TO PULL DOWN AND REBUILD A HOUSE, &c.

building trade or any other trade connected therewith, or by reason of the owner failing to pay to the builder any money due to him under clause 6 hereof, then such further time shall be allowed for the completion of the said works as the architect shall certify in writing to be reasonable.]

Materials to be provided by builder (*c*).

4. The builder shall supply all materials to be used in the works, whether mentioned in the specification or not, save as otherwise provided by the specification and save as may be otherwise required in writing by the owner or the architect.

Clearance after completion.

5. The builder shall within —— days after the completion of the works remove all scaffolding, fencing, implements, materials, and rubbish, and leave the house, buildings, and works in a clean and proper condition.

Payment (*d*).

6. The owner shall pay to the builder the sum of £—— in manner following, that is to say:—the sum of £—— upon production to the owner of the architect's certificate in writing (*e*) that work to the value of £—— has been duly executed to his satisfaction; the further sum of £—— upon production of the like certificate that work to the value of £—— has been so executed; and the balance of the said sum of £—— upon production of the like certificate that the said works have been completed and the said house and buildings covered in and made fit for habitation in accordance with this agreement and to the architect's satisfaction [*or*, "in sums amounting to ninety per cent. on the value of the works for the time being executed, and not being less than £—— at each payment, such percentage to be ascertained by the architect, and to be paid upon production to the owner of his certificate in writing that the work has been done to his satisfaction, and the balance of the said sum of £——, &c." *as before*].

Certificate to be withheld in certain events.

7. The architect's certificate shall not be given in respect of any work which is defective or not in accordance with the contract,

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at p. 612; *Stephens* v. *Harris*, 57 L. J. Q. B. 203; of "lock-out," see *Re Richardson and Samuel*, [1898] 1 Q. B. 261.

(*c*) A person who contracts to build a house impliedly undertakes to provide all necessary materials: *Williams* v. *FitzMaurice*, 3 H. & N. 844.

(*d*) As to payment by the employer being made conditional on his approval of the work done, see *Dallmann* v. *King*, 4 Bing. N. C. 105; *Parsons* v. *Sexton*, 4 C. B. 899; *Hughes* v. *Lenny*, 5 M. & W. 193.

(*e*) The contract should require the architect's certificates to be in writing: see *Roberts* v. *Watkins*, 14 C. B. N. S. 592. As to the effect of conditions requiring certificates, see *Sharpe* v. *San Paulo Rail. Co.*, L. R. 8 Ch. 597; *Dobson* v. *Hudson*, 1 C. B. N. S. 659.

I. TO PULL DOWN AND REBUILD A HOUSE, &C.

or while the builder is not using due diligence in executing the works or is making default in the due performance of this agreement.

Alterations and deviations (*f*).

8. All alterations in or deviations from the said original specification and plans which may be ordered in writing by the owner, whether by way of addition or omission, or otherwise, shall be carried out under the direction and to the satisfaction of the architect in like manner as if the same had been included in the original specification and plans, and all additions to or deductions from the contract price in respect of such alterations or deviations shall be fixed by the architect. No payment or allowance shall be made to the builder for extra work done or materials used without the previous authority in writing of the owner, and the contract price shall not be altered by reason of any authorised alteration or deviation except so far as the same shall alter the amount of labour or the value of the materials required to be used in or about the works, nor shall the mode of payment of the contract price or of ascertaining the value of the work done be affected by any such alteration or deviation. And only such further time (if any) as the architect shall certify in writing to be reasonable shall be allowed in respect or by reason of any such alteration or deviation (*g*).

Deduction or set-off.

9. The owner shall be entitled to deduct any moneys payable to him by the builder under this contract from any sum payable hereunder to the builder, and in making his certificates the architect shall have regard to any sums so payable by the builder. But this provision shall not affect any other remedy which the owner may be entitled to for the recovery of any such moneys.

Penalties for delay (*h*).

10. If the builder shall from any cause whatever fail to complete the said dwelling-house, buildings, and works, and to remove all scaffolding, fencing, unused materials, and rubbish within the

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(*f*) See *Tharsis Sulphur and Copper Co.* v. *McElroy*, 3 App. Cas. 1040; *Richards* v. *May*, 10 Q. B. D. 400. As to builders' right to payment in the case of trifling and immaterial deviations or omissions from the contract, see *Lucas* v. *Godwin*, 3 Bing. N. S. 737; *Stannard* v. *Lee*, 3 B. & S. 364.

(*g*) This last clause is necessary to enable the owner to recover in respect of delay where additional works are ordered: see *Dodd* v. *Churton*, [1897] 1 Q. B. 562.

(*h*) See *Law* v. *Redditch Local Board*, [1892] 1 Q. B. 127; *Gallivan* v. *Killarney U. D. C.*, [1912] 2 I. R. 356.

I. TO PULL DOWN AND REBUILD A HOUSE, &c.

respective times and in the manner aforesaid, or within such extended time as shall be allowed for that purpose, then, upon the architect certifying in writing that such default has been made, the builder shall pay to the owner as liquidated damages, and not as a penalty, the sum of £—— for every subsequent week, and so in proportion for any part of a week until such completion and removal as aforesaid shall have been duly effected, such completion and removal to be certified in writing by the architect.

Materials to belong to the owner (*hh*).

11. All materials from time to time in or about the premises for use in the said works, except such as the architect may object to as not being in accordance with the specification, shall be the property of the owner, and shall so far as required be used solely for the purposes of the said works, and shall not be removed without the written authority of the architect so long as the works are in progress, but on completion of the works any surplus materials shall be removed by the builder as hereinbefore provided.

Contract not to be assigned.

Power for the owner in case of delay or bad work, &c. to carry out works at the builder's expense.

12. The builder shall personally superintend the carrying out of the works, and no part of the work shall be assigned or underlet without the express consent in writing of the owner (*i*). In case of unnecessary delay by the builder in proceeding with the works, such delay being certified in writing by the architect, and if the owner or the architect shall have given to the builder, or left at his then or last-known place of abode or business, notice in writing to proceed with the works, and the builder shall not so proceed within —— days after such notice shall have been so given or left, or in case the architect shall have certified in writing that any work or materials are defective, and the builder shall fail to remove any such works or materials within ten days after notice in writing by the owner or architect requiring him so to do shall have been given to him or left at the works or at his last-known place of abode or business, or in case the builder shall assign or sub-let this contract without such consent as aforesaid, then, and in any such case, the owner shall be at liberty without avoiding this contract to take possession of the premises and to retain and use all or any materials and implements thereon, including all scaffolding, plant, and tools, and employ any person or persons

(*hh*) As to the validity of this clause, see K. & E. Prec. 10th ed. p. 8, note (*a*).

(*i*) The builder may assign moneys to become payable under the contract subject to the owner's rights. As to the effect of such assignments, see *Drew* v. *Josolyne*, 18 Q. B. D. 590.

I. TO PULL DOWN AND REBUILD A HOUSE, &c.

to execute the said works, either wholly or partially, without being liable for any loss of materials or injury done to them during the execution of the works, and all expenses and damages thereby incurred shall be paid by the builder to the owner upon the architect ascertaining and certifying in writing the amount thereof.

Architect's certificate to be binding (*j*).

13. The architect's certificate or decision in writing as to any matter in respect of which his certificate is hereby required shall be binding on both parties [except as to the sufficiency of any work or materials as to which no certificate shall relieve the builder from the liability to make good any defective work or material, and] except that the architect may by further certificate correct or modify any previous certificate made by him or any predecessor in office.

Builder to conform to statutory or local regulations.

14. The builder shall conform in all respects to the provisions and regulations of any general or local Act of Parliament, or of any local authority, which may be applicable to the said works, and shall indemnify the owner against all penalties incurred by reason of the non-observance of any such provisions or regulations and against all actions or proceedings in respect of damages caused to a highway in the carrying out of this contract (*jj*).

Arbitration (*k*).

15. In case any question, dispute, or difference shall arise between the owner, or the architect on his behalf, and the builder as to the construction or effect of these presents, or as to any other matter or thing arising hereunder, or as to the rights or liabilities of the respective parties under this agreement (except as to matters hereby left to the sole decision of the architect, and as to which his certificate has not been unreasonably withheld), then every such question, dispute, or difference shall be referred to the arbitration of two persons (one to be appointed by each party to the reference) or their umpire. And this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889,

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(*j*) As to finality of the architect's certificate, see *Robins* v. *Goddard*, [1905] 1 K. B. 294; *Sharpe* v. *San Paulo Rail. Co.*, L. R. 8 Ch. 597; *Lawson* v. *Wallasey Local Board*, 52 L. J. Q. B. 302. In the absence of a clause excepting the sufficiency of work or materials (see *Ayr Board Trustees* v. *Adams*, 11 Ct. of Sessions Cas. 326) the certificate will bind the employer as well as the builder: *Goodyear* v. *Weymouth* (*Mayor*), 1 H. & R. 67; *Lapthorne* v. *St. Aubyn*, 1 C. & E. 486.

(*jj*) See Locomotives Act, 1898, s. 12; *Epsom U. D. C.* v. *L. C. C.*, [1900] 2 Q. B. 751; *Egham R. D. C.* v. *Gordon*, [1902] 2 K. B. 120.

(*k*) For other form of arbitration clauses, see *post*, pp. 10, 13, 15.

I. TO PULL DOWN AND REBUILD A HOUSE, &c.

or any statutory modification or re-enactment thereof for the time being in force.

In witness whereof the said parties hereto have hereunto set their respective hands, &c.

II. AGREEMENT *to* Build *a* House, *&c., where no* Architect *is employed* (*l*).

AN AGREEMENT, made the —— day of ——, 19—,

Parties. Between [*builder*], of, &c. (hereinafter called "the builder"), of the one part; and [*owner*], of, &c. (hereinafter called "the owner"), of the other part; WHEREBY IT IS AGREED as follows:—

Builder to erect buildings according to plan.

1. The builder shall forthwith commence, and within the space of —— calendar months from the date of this agreement, erect, build, and completely cover in and finish upon the land of the owner, at —— [aforesaid], a dwelling-house and buildings according to the plans and specifications set forth in the schedule hereto.

With best materials, &c.

2. All and singular the works aforesaid shall be executed, according to the said plans and specifications, within the time aforesaid, with the best materials (*m*), and in a good, workmanlike, and substantial manner, to the satisfaction of the owner in every respect.

Clearance after completion.

3. The builder shall within —— days after the completion of the works, remove all his scaffolding, fencing, implements, materials, and rubbish, and leave the works in a clean and proper condition.

Penalties for delay.

4. If the works shall not be completed, or if the said scaffolding, implements, and plant shall not be removed within the times hereinbefore respectively mentioned, then, and in either such case, for every subsequent working-day until the completion of the works or the removal of the said scaffolding, implements, and materials, as the case may be, the builder shall pay to the owner £—— as liquidated damages: and it shall be lawful for the owner to deduct any sum which may become payable to him, under or by virtue of this clause, from the money which shall be due to the builder under this agreement.

(*l*) See note (*a*), p. 3. Stamp, 6*d*., if under hand only.

(*m*) See note (*c*), p. 4.

5. If the builder should from any cause whatsoever fail to complete the said dwelling-house, buildings, and works in manner or within the time aforesaid, and the owner should give or leave notice in writing of such default at the last known place of abode of him (the builder), and the builder should not proceed to complete the said buildings and works, within the space of seven days after such notice given or left as aforesaid, Then and in any such case it shall be lawful for the owner, without let or hindrance from the builder, or any person or persons employed by him, to purchase materials, And to employ workmen to complete the said dwelling-house, buildings, and works, And to deduct the costs of such materials, and all such sum and sums of money as he shall pay to such workmen, for the completion of such dwelling-house, buildings, and works out of the money which shall be due to the builder under this agreement (*n*): And if the cost of materials and the sums so paid to workmen by the owner shall exceed the amount so due to the builder, then the excess shall be paid to the owner by the builder.

In case of default, owner may complete and deduct cost.

6. The owner, subject as aforesaid, shall pay to the builder the sum of £—— within —— days (*or* months) next after the completion of the said dwelling-house and premises, to his satisfaction as aforesaid.

Owner to pay builder at one payment.

7. If the owner should direct any more work to be done (*o*) in or about the said dwelling-house and premises than is mentioned in the schedule hereto, the owner shall pay to the builder so much money as the cost of such extra work, and the materials used therein, shall amount unto, in addition to the said sum of £——; And if it should be thought proper by the owner to diminish or omit any part of the work in the said schedule hereto, Then, and in every such case, the builder shall allow out of the said sum of £—— so much money as the work so to be diminished or omitted shall amount to, upon a reasonable valuation. No extra or additional work shall be done by the builder without the previous order in writing of the owner.

Additional work to be paid for.

Omitted work to be deducted.

8. All work which may be rendered necessary by reason of the works hereby agreed to be executed by the builder, and also all things which may fairly be inferred from the said plans and specifications, although such works and things respectively may

(*n*) See *Duckworth* v. *Alison*, 1 Mee. & W. 412.

(*o*) See note (*f*), p. 5.

II. TO BUILD A HOUSE, &C.

not have been actually specified in the same plans and specification, shall not be deemed to be additional or extra works within the meaning of this agreement, nor shall the builder be entitled to any additional payment in respect thereof.

Arbitration clause (*p*).

9. If any dispute or difference should arise touching or concerning the dwelling-house, buildings, and works, hereby agreed to be erected and done as aforesaid, or touching or concerning any other matter or thing whatsoever, relating to the work hereby contracted to be done, or such additional or extra work as aforesaid, Then such dispute or difference shall be left to the determination and award of three indifferent persons, one to be named by the builder, another by the owner, and the third to be chosen by the said two persons so to be named as aforesaid, immediately or within ten days after notice of such dispute or difference; and the decision of the three persons so to be chosen, or of any two of them, shall be final. And this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force.

In witness, &c.

The Schedule above referred to.

III. BUILDING AGREEMENT *for making extensive* Alterations *of, and* Additions *to a* House *in* London.

AN AGREEMENT (*q*), made the —— day of ——, 19—, Between [*builders*], of, &c. (hereinafter called "the builders"), of the one part, and [*owner*], of, &c. (hereinafter called "the owner"), of the other part. WHEREBY IT IS AGREED as follows:—

Agreement for execution of works.

1. The builders, in consideration of the sum of £——, to be paid to them by the owner, as hereinafter mentioned, will at their own costs and charges, execute certain works in alterations of and additions to No. 100, —— Street, W., according to the drawings numbered 1 and 2, and the specifications severally signed by them, such several works to be done under the direction and to the entire

(*p*) For other forms of arbitration clauses, see *ante*, p. 7, and *post*, pp. 13 and 15.

(*q*) Stamp, 6*d*., if under hand only.

III. BUILDING AGREEMENT FOR ENLARGING A TOWN HOUSE.

satisfaction of Messrs. —— [*architects*], of, &c., or other the architects for the time being appointed by the owner to superintend the works (hereinafter referred to as the architects), in accordance with the provisions and regulations of any general or local Act of Parliament which may be applicable to the said works, and the requirements of the local authorities, and upon the conditions hereinafter specified.

Builders to provide proper materials, &c.

2. The builders shall at their own costs and charges provide all necessary labour, strong and secure scaffolding, moulds, and implements of every kind necessary for carrying on and completing the works, and also all materials required for the due performance of this contract, which are to be the best of their several sorts and kinds mentioned in the said specification.

Notices to local authorities.

3. The builders shall give the proper notices to and pay the fees of all public bodies and officers entitled thereto.

Defects to be made good.

4. The architects may at any time inspect the works and materials supplied for the execution of the same. If at any time during the progress of the works above mentioned, any improper or defective materials or workmanship be observed, upon notice being given in writing, the said materials shall be immediately removed from off the premises, or the said workmanship shall be immediately made good at the cost of the builders; or the architects shall be at liberty to remove or make good the same as the case may be, and deduct the expense of such removal or making good from the amount of the consideration-money hereinafter mentioned.

Alterations, &c. in works.

5. Should any alteration, variation, or omission be made in the works, the same shall not make void or invalidate this agreement, nor vary the time hereinafter fixed for completion of the works, unless an extension of time shall be allowed by an order in writing of the architects (*r*), but the value of any such alteration, variation, or omission as aforesaid, shall be estimated by the architects and be added to or deducted from the amount due under or by virtue of this agreement as the case may be. No alteration, variation, or omission is to be made, and no extra works are to be done without the previous order in writing of the architects.

Bills of quantities.

6. If any errors shall be discovered in the detailed bills of

(*r*) A provision similar in effect to that in the text was strictly enforced in the case of *Jones* v. *St. John's College*, L. R. 6 Q. B. 115; distinguished in *Dodd* v. *Churton*, [1897] 1 Q. B. 562.

III. BUILDING AGREEMENT FOR ENLARGING A TOWN HOUSE.

quantities, the same shall be rectified, and an addition to or deduction from the amount payable to the builders under or by virtue of this agreement shall be made accordingly; provided always, that the builders shall notify in writing to the architects the discovery of any such error within —— days from the date hereof, after which time no question as to the accuracy or otherwise of the said bills of quantities shall be entertained (*s*).

Commencement and execution of the works.

7. The works are to be commenced on or before the —— day of ——, 19—, and to be executed in a proper and substantial manner in every respect, and to be completed on or before the —— day of —— next (with the exception of new dining-room and stable building above basement level, which are to be completed on or before the —— day of ——), in default whereof the builders shall forfeit and pay to the owner the sum of 50*l.* per week as liquidated damages in each case, for every week during which the said works shall remain unfinished. Payments to be made by the owner, from time to time, as the works progress as hereinafter mentioned. The said specifications and drawings hereinbefore mentioned are to be considered as embracing all the works necessary to be done in order to finish completely the several works therein mentioned, although the details may not be clearly and specifically expressed.

Drawings and specifications.

8. Complete copies of the drawings and specifications, signed by the architects, shall be furnished by them to the builders, for their own use, and shall be kept on the premises in charge of a competent foreman, who shall be constantly at the works and shall be employed by and shall represent the builders for the purpose of receiving notices, orders, and instructions.

Contract not to be assigned, &c.

Cesser of contract in case of delay (*ss*).

9. No part of the work shall be assigned or underlet unless with the consent in writing of the architects. In case of unnecessary delay by the builders, or their not proceeding with the works with sufficient dispatch, the architects shall be at liberty, after —— days' notice in writing to the builders, to employ other persons to complete the works, and to take possession of all the

Bills of quantities.

(*s*) As to the importance of this clause and the results of depending on the accuracy of bills of quantities, see *Kemp* v. *Rose*, 1 Giff. 258; *Kimberley* v. *Dick*, L. R. 13 Eq. 1; *Scrivener* v. *Pask* (Ex. Ch.), L. R. 1 C. P. 715.

(*ss*) This should not be extended to the case of the builder becoming bankrupt: see *Ex parte Jay*, 14 Ch. D. 19; *Ex parte Barter*, 26 Ch. D. 510.

material on the site, and to deduct the cost of completion from the sum then due under or by virtue of this agreement to the builders. The owner shall not be liable for any loss of materials, or for injury done to them during the execution of the works.

Payment.

10. The said sum of £—— shall, subject as hereinafter mentioned, be paid by instalments, as the works progress, as follows, that is to say: On the —— day of ——, 19—, £——; on the —— day of ——, 19—, £——; on the —— day of ——, 19—, £——; and on the —— day of ——, 19—, the balance, £——; but no payment made as aforesaid shall exceed 75 per cent. on the value of the work done up to the time of such payment, such value to be determined by the architects.

Injunction.

11. In the event of any proceedings for an injunction or otherwise being instituted and successfully maintained against the owner in respect of the said works or new buildings, or any part thereof, the owner shall only be liable to pay to the builders the actual value of the works executed and properly prepared up to the date of the successful termination of such proceedings, and the consequent stoppage of the works; [the amount so payable to be determined by the architects alone, whose decision shall be final in the matter.] The owner shall not be liable in damages or otherwise to the builders in respect of any loss or alleged loss caused to them by the stoppage of such work, nor for any materials provided by them in anticipation of such works being carried through or otherwise, except as aforesaid: Provided, nevertheless, that nothing herein contained shall affect this agreement with reference to any works or buildings which shall not be included in such proceedings, and stopped as aforesaid.

Reference to arbitration.

12. In case any question, dispute, or difference shall arise between the owner, or the architects on his behalf, and the builders, as to what additions, if any, ought in fairness to be made to the amount of the said consideration money, by reason of the works being delayed through no fault of the builders, or by reason or on account of any directions or requisitions of the architects, involving increased cost to the builders, beyond the cost properly attending the carrying out of this contract according to the signed drawings and specifications, or as to the works having been duly completed, or as to the construction of these presents, or as to any other matter or thing arising under or out of this contract, except as to matters left during the progress of the works,

III. BUILDING AGREEMENT FOR ENLARGING A TOWN HOUSE.

to the sole decision or requisition of the architects under any clause hereof, or in case the builders shall be dissatisfied with any certificate of the architects, or in case they shall withhold or not give any certificate to which the builders may be entitled, then such question, dispute, or difference, or such certificate, or the value or matter which should be certified, as the case may be, shall be from time to time referred to the arbitration and final decision of ——, architect, or in the event of his death or unwillingness to act, then of ——, architect, and in the event of his death or unwillingness to act, then of an architect, being a Fellow of the Royal Institute of British Architects, to be appointed on the request of either party by the President for the time being of such institute, and this shall be deemed to be a submission within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force, the provisions whereof shall so far as applicable apply. The costs of the arbitration and award shall be in the discretion of the arbitrator.

As witness, &c.

IV. AGREEMENT *with a* Builder, *where the* Terms *are set out in the* Specification.

Parties.

AN AGREEMENT (*t*), made the —— day of ——, 19—, Between [*builder*], of, &c. (hereinafter called "the builder"), of the one part, and [*owner*], of, &c. (hereinafter called "the owner") of the other part.

Builder's agreement.

1. The builder shall execute and do the several works, the particulars whereof are set forth in the specification hereunto annexed and signed by the builder, and by [*architect or surveyor*], the architect [surveyor] of the owner, and the plans and drawings therein referred to, in or upon the premises therein mentioned, within the time or respective times, and in consideration of the payments to be made by the owner as therein mentioned, and shall perform, observe, and be bound by all the conditions, stipulations, and provisions therein or thereby expressed, or intended to be performed or observed by, and to be binding on, the builder.

(*t*) Stamp, 6*d*., if not under seal.

IV. AGREEMENT WITH A BUILDER.

2. The owner shall, in consideration of the premises, make such payments to the builder as are mentioned in the said specification at the respective times, and in the manner therein mentioned, subject to such deductions and abatements (if any) to be made as therein expressed. Owner's agreement.

3. If any dispute, difference, or question shall arise between the parties hereto, touching the construction or effect of these presents or the said specification, or any clause, matter, or thing herein or in the said specification contained, or the right or liabilities of the parties hereto respectively hereunder or otherwise in relation to the premises, then every such dispute, difference, or question shall be referred to the arbitration of two persons, one to be appointed by each party to the reference, or to an umpire to be appointed by the arbitrators in writing [before entering upon the business of the reference], and this clause shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification thereof for the time being in force. Arbitration.

As witness, &c.

[*Specification to be annexed.*]

V. AGREEMENT *to* Employ *a* Manager *of a* Business *at a* Salary *with a* Percentage *on the* Net Profits (*with* Variation *for* Percentage *on* Gross Returns).

THIS AGREEMENT (*u*), made the —— day of ——, 19—, Between [*merchant*], of, &c. (hereinafter called "the employer"), of the one part, and [*manager*], of, &c. (hereinafter called "the manager"), of the other part. Parties.

1. The manager shall, during the term of —— years from the —— day of —— next (*x*), if both parties shall so long live and the employer shall continue to carry on the business of ——, Agreement to act as manager.

(*u*) If not under seal, stamp, 6*d*. It would seem that a yearly salary is not an annuity or periodical payment so as to require an *ad valorem* stamp: see *Mounsey* v. *Stephenson*, 7 B. & C. 403. As to what agreements come within sect. 4 of the Statute of Frauds, see Preliminary Note, *ante*, p. 1.

(*x*) If the manager is to receive a percentage on profits, the term should be reckoned from the commencement of a business year.

V. TO EMPLOY MANAGER, &C.

whether alone or in partnership with any other person or persons, serve the employer as manager of the said business.

Conduct of business.

2. The manager shall give his whole time and attention to the said business, and shall use his best endeavours to improve and extend the same, and shall not during the continuance of this agreement engage or be concerned or interested in any other business (*y*).

Manager to obey instructions of principal.

3. The manager shall diligently and faithfully obey and observe all lawful orders and instructions of the employer in relation to the said business, and shall not without his consent divulge any secrets or dealings in relation thereto (*yy*).

Manager to keep accounts.

4. The manager shall render to the employer when required a full account of all dealings and transactions in relation to the said business, and shall keep at the place of business proper books of account, showing by the entries therein all moneys received or paid, and all goods bought, received, sold, or delivered out, and all particulars in relation thereto, and all other matters which may be necessary to show the state of the business.

To pay over moneys.

5. The manager shall duly account for all moneys and securities coming into his hands or power, and belonging to the employer, and shall forthwith pay or deliver the same to the employer or to his bankers for the time being to his credit, except such moneys as the manager shall, with the consent of the employer, retain for the immediate purposes of the business.

Salary, &c. of manager,

6. The employer shall during the said term, so long as the manager shall duly observe and perform the agreements on his part herein contained, pay to the manager an annual salary of £——, by equal quarterly payments on the —— day of ——, &c. [on the usual quarterly days], in each year, without any deduction, except for income tax, the first payment to be made on the —— day of —— next. [And shall also pay to the manager, at the end of each year of the said term, a further sum equal to [ten] per cent. on the net profits (if any) of the business for that year, after deducting interest on capital, rent, rates, taxes, repairs, wages,

and percentage on net profits.

(*y*) As to the importance of inserting a positive stipulation that the manager shall not "engage" or "be concerned" ("interested" is not sufficient) in any other business, see *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416; and *Gophir Diamond Co.* v. *Wood*, [1902] 1 Ch. 950. And see, too, *Chapman* v. *Westerby*, 58 Sol. J. 50.

(*yy*) See *Amber Size, &c. Co.* v. *Menzel*, [1913] 2 Ch. 239.

and other outgoings, expenses, and charges usually deducted in estimating the net profits of such a business] (*z*).

Provision for payment of proportion of salary, &c. on termination of engagement.

7. In the event of the manager dying or his engagement being terminated before the expiration of the said term, the employer shall forthwith pay to him, or to his executors or administrators, as the case may be, in respect of his services for the whole or any part of the then current year, a due proportion of the said salary of £—— [together with such further sum in lieu of such percentage as aforesaid as shall represent a due proportion of a sum equivalent to [ten] per cent. of the net profits for the then current year of the said business, estimated at a sum equal to the average net profits of the said business for the three years immediately preceding the then current year].

Annual account to ascertain percentage.

8. [In order to ascertain the amount of the further sum payable to the manager in addition to his salary, as aforesaid, an account of the business, to be made up by or under the direction of the employer, and showing the net profits for the year, shall be prepared and furnished at, or as soon as may be after, the end of each year of the said term, to the manager; and on being submitted to, and verified by the certificate of Messrs. ——, or other the accountants or accountant for the time being of the employer, shall be binding and conclusive upon the manager.]

Residence or board or lodging for manager.

9. The employer shall provide the manager during the continuance of the engagement with a suitable residence at ——, or elsewhere, free from rent, rates, and taxes [*or* " with suitable board and lodging, and everything necessary and incident thereto, and the manager shall, if required by the employer, reside in the house in which the business shall for the time being be carried on,

(*z*) If the percentage is to be reckoned on gross returns in lieu of the provision in brackets, say—

" And shall also pay to the manager, at the end of each year of the said term, a further sum equal to —— per cent. on the gross profits for the year, without deducting interest on capital or outgoings or expenses properly deducted in estimating net profits only, but deducting bad or doubtful debts,"

and in other parts of the agreement substitute " gross profits " for " net profits." As to the meaning of " profits," see *In re Spanish Prospecting Co., Ltd.*, [1911] 1 Ch. 92; *Re Crabtree*, [1912] W. N. 24. The participation in " profits " under this agreement does not create a partnership: see *Walker* v. *Hirsch*, 27 Ch. D. 460; 54 L. J. Ch. 315; Partnership Act, 1890, s. 2 (3) (b).

V. TO EMPLOY MANAGER, &C.

in which case he shall have the use of —— rooms therein, properly furnished, and free from rent, rates, and taxes in respect thereof "].

Termination of engagement on notice, &c.

10. The said engagement may be terminated at any time before the expiration of the said term by either party on giving, or sending by post in a registered letter to the other party at his usual place of abode or business, six calendar months' notice in writing, and upon the expiration of six calendar months from the date of such notice being given or posted the engagement shall determine. The employer may at any time terminate the engagement on paying to the manager in lieu of such notice, as aforesaid, six calendar months' salary in advance, in addition to any salary due or accruing up to date [with such further sum in lieu of such percentage as aforesaid for such six months as shall be equal in amount to half the amount which became payable by way of percentage for the then last preceding year, for which an account thereof shall have been made up and verified as aforesaid].

Power to suspend salary or terminate engagement in case of default or incapacity.

11. In the event of the manager at any time wilfully neglecting or refusing, or being incapacitated by illness or any other cause to perform his duties under this agreement, the employer may suspend payment of the salary of the manager [and of any further sums payable by way of percentage] during such neglect, refusal, or incapacity, and may in the like event immediately terminate the engagement of the manager without giving any such notice (*a*) or making any such payment in advance as is provided for in clause 10 hereof.

IN WITNESS, &c. ——————

VI. AGREEMENT *to employ an* AGENT *in a* COLONY *at a* SALARY, *with a* PERCENTAGE *on* SALES (*b*).

Parties.

THIS AGREEMENT, made this —— day of ——, 19—, BETWEEN [*merchants*], of, &c., of the one part, and [*agent*], of, &c., commercial agent, of the other part: WHEREBY IT IS AGREED by and between the parties hereto as follows:—

(*a*) As to dismissal without notice in the absence of agreement except for misconduct, see *Re African Association, Ltd.*, [1910] 1 K. B. 396; *Nelson* v. *Nelson & Sons, Ltd.*, [1914] 2 K. B. 776.

(*b*) Stamp. This instrument if executed here will require a British stamp (see *ante*, p. 1), though it relates to acts to be done abroad: *Stonelake* v. *Babb*, 5 Burr. 2675; *Wright* v. *Commissioners of I. R.*, 11 Exch. 458. It may also require to be stamped abroad by the laws of the country where it is used.

VI. TO EMPLOY AGENT IN A COLONY.

Interpretation clause.

1. In this agreement the term "the agent" means the said [*agent*], and the term "the principals" includes the said [*merchants*], and the survivors and survivor of them, and such person or persons as may from time to time be copartner or copartners in trade with them, or the survivors or survivor of them, and their respective executors, administrators, and assigns.

Engagement of agent for a fixed term.

2. The principals shall employ the agent as their agent, to take care of, conduct, and manage a certain store or warehouse, belonging to the principals, situate at ——, in the British colony of ——, with full and free power and liberty to buy, sell, barter, or exchange any merchandise, stock, cattle, timber, colonial produce, manufactures, corn, hay, or any other article the agent may deem or consider profitable to the interest and benefit of the principals, for the term of —— years from the —— day of ——.

Salary.

3. The principals will, during the said term, pay to the agent for his services the annual salary of £——, by equal quarterly payments on the —— day of ——, &c. in each year, without any deduction except for income tax, and will make the first payment of the said salary on the —— day of —— next. And further, the agent shall be allowed a commission of 5*l.* per cent. on all sales above the sum of £—— per annum, which the agent may make or effect, for or on behalf of the principals, in addition to his said annual salary of £——: And further, if after the expiration of the said first year of the said term of —— years, the sales to be effected by the agent shall not produce more than the sum of £——, the principals do hereby further agree to pay and allow to the said agent for each year during the remainder of the said term of —— years in which the sales shall be below that sum, as a remuneration for his exertions, the annual salary of £——, in addition to the aforesaid annual sum of £——, to be paid and payable at the same times and in the same manner as is hereinbefore appointed and provided for payment of the said annual salary of £——; And which annual salary or salaries, and percentage, the agent shall be at liberty to deduct and retain, out of the first moneys which shall come to his hands.

Commission on sales beyond a certain valne.

Additional salary in lieu thereof, if sales fall short of a certain amount.

Agent may retain salary.

Principals to supply goods, &c.

4. The principals will, at their own proper costs and charges, find and provide for the agent all kinds of goods, wares, merchandises, and other articles and things of every nature and description whatsoever, which he may demand or deem requisite for the carrying on and conducting the said store or warehouse,

VI. TO EMPLOY AGENT IN A COLONY.

or otherwise in the execution, conduct, or management of his office as such agent as aforesaid, so that he may be enabled to effect sales, and manage, conduct, and carry on the said store or warehouse to the greatest advantage and benefit of the principals.

Agent may reside in adjoining house with his family without paying rent.

5. The agent and his [wife, family, and] servants shall be at liberty to reside in and have the use and occupation of the dwelling-house, and all other the premises, with the appurtenances, now the property of the principals, which adjoin or belong to the said store or warehouse, without paying any rent for the same; and the principals hereby agree, by and at their own costs and charges, to furnish the said dwelling-house with suitable household and other furniture of every nature and description whatsoever [to the approbation of the agent].

Principals to furnish house.

Principals to provide clerks, &c. (*bb*).

6. The principals will, at their own proper costs and charges, find and provide the agent with suitable assistants, servants, and workmen, to be under and assist the agent in the business of the said store or warehouse, and in and about the exercise of his office, as agent to the principals.

Principals to provide board and lodging for agent's family, clerks, &c.

Agent to deduct expenses.

7. The principals will also find and provide the agent and his [wife, family, and] servants, and all assistants, servants, and workmen, both male and female, who may be so employed by the agent as aforesaid, with suitable board and lodging, and everything necessary or incident thereto: And all such sum and sums of money, costs, charges, and expenses which may be or sustained in the providing of such board and lodging, and also in the payment of all assistants, servants, workmen, and other persons' wages who may be employed for the purposes aforesaid, the agent shall be at liberty to deduct, retain, and reimburse by and out of the first moneys which shall come to his hands.

Principals to send out agent with his family and goods at their expense.

8. The principals will pay the boat and railway fares, and other costs, charges, and expenses of or incident to the conveyance of the agent, and his [wife, family, and] assistants, servants,

(*bb*) Instead of this clause insert, if desired, the following:—

"The agent shall have full power, at his discretion, but at the cost and charge of the principals, to engage, either in England or in the said colony, and to employ such assistants, servants, and workmen as he shall deem necessary for the due carrying on and management of the said store or warehouse, and shall have a like power to dismiss all or any of such assistants, servants, and workmen if and when he shall think fit."

and any household or other furniture, goods, chattels, property, or effects which the agent or his [family or] assistants or servants may think proper to take with them to the said colony, all their hotel and other expenses of and incident to their journey thither; and also all railway and other fares, and hotel and other expenses of and incident to any journeys which the agent shall at any time hereafter be required by the principals to take for the purposes of their said business. VI. TO EMPLOY AGENT IN A COLONY.

9. In case the agent should not approve of the situation as agent to the principals in the said colony, or in case the climate should not agree with the health of himself or family, the agent shall, upon giving —— weeks' [months] notice in writing to the principals, be at liberty to give up his employment as such agent as aforesaid, and to return to England, and then, and in such case, these presents, and every clause, matter, and thing herein contained shall cease, determine, and be utterly void, to all intents and purposes, anything to the contrary thereof in anywise notwithstanding; and in such case the principals will, upon the expiration of such notice, so to be given as aforesaid, at their own proper costs and charges, reconvey the agent and his wife, family, assistants, and servants, and any goods, chattels, property, or effects they may think proper to bring back again with them, to the port of London. Agent may determine agreement on giving notice. Principals to bring agent and family and goods home.

10. The agent will, during the said term of —— years, if he shall so long live, well, diligently and faithfully, to the utmost of his power, serve the principals as their agent, and take upon himself the care, conduct, and management of their trade at the said store or warehouse; And will, at all times during the said term, receive and take into his care and custody, all such goods and merchandise whatsoever as by or for the use or on the account of the principals shall be conveyed or sent to the agent, and will sell, barter, and dispose of the same goods and merchandise to the best profit he can for the principals; And also will, at all times during the said term, follow and perform the advice, direction, and orders of the principals, which shall, by letters or otherwise, be sent, given, or made known to him the agent, concerning such store or warehouse and merchandise as aforesaid. Agent to act diligently and faithfully during term. To receive goods and dispose of goods. To obey directions of principals.

11. The agent will, at the costs of the principals, provide and keep in good order such proper books of account, and otherwise, concerning his employment as such agent as aforesaid, To keep books of account.

VI. TO EMPLOY AGENT IN A COLONY.

as are usual according to the custom of agents to merchants in such cases: And will deal justly, truly, and faithfully with the principals in all and every his accounts, reckonings, bargains, and dealings, relating to and concerning his said employment as such agent as aforesaid: And will constantly, once in every year during the said term of —— years, determinable as aforesaid, transmit and send to the principals true accounts of all the business and dealings of him the agent in the premises; And also will send letters of advice to the principals of all such measures and occurrences wherewith it shall be proper and expedient that the principals be acquainted.

To deal justly.

To transmit accounts annually.

To advise principals of all important matters.

12. The agent will, from time to time, upon every reasonable request of the principals, produce to them, or either of them, all his said books, and make and give to them a just and perfect account of and concerning all and every such goods, wares, money, and merchandise of the principals which shall hereafter come to his hands and charge, or for which he should or ought to be accountable to the principals; and, moreover, will, within —— months after every such annual account shall be made or given in, well and truly pay and deliver over to the principals all and every such money, wares, goods, merchandise, and other effects and things as by such account shall appear to be due from him to the principals, and shall by them be required to be so paid and delivered over.

To produce books of account, on request.

To render goods or moneys due.

As witness, &c.

VII. AGREEMENT *to employ a* Factor, *to be* Remunerated *by a* Share *of* Profits, *with* Weekly Drawings (*c*).

AN AGREEMENT, made the —— day of ——, 19—, Between [*factor*], of, &c., of the one part; and [*four copartners, principals*], all of, &c., of the other part. WHEREBY IT IS AGREED by and between the said parties hereto as follows, that is to say:—

Parties.

1. In this agreement the term "the factor" means the said [*factor*], and the term "the principals" includes the said [*principals*], and the survivors and survivor of them, and such person or persons as may from time to time be copartner or co-

Interpretation clause.

(*c*) Stamp, 6*d*. (if not under seal), in respect of the agreement to employ, and a further 10*s*. for the power of attorney in clause 25.

VII. TO EMPLOY A FACTOR.

partners in trade with them, or the survivors or survivor of them, and their respective executors, administrators and assigns.

Agreement to act as factor for —— years.

2. The factor will act as the factor or agent of the principals in the vending of ——, for the term of —— years from the date hereof, determinable nevertheless as hereinafter mentioned, and will conduct and carry on the said agency, at the shop or warehouse of the principals, in —— Street, in the city of London, or in such other shop or warehouse, in the said city of London, as they may direct or appoint for that purpose.

Conduct of business.

3. The factor shall not assign, transfer, or make over the said agency or this contract to any person or persons without the consent in writing of the principals, but will give his whole time and attention to the said agency, and will not, otherwise than as factor on behalf of the principals, engage or be concerned or interested in buying, selling, or dealing in ——, or in any other business whatsoever, directly or indirectly, either on his own account, or as a factor or agent, and either alone or in copartnership with any person or persons whomsoever, without the consent in writing of the principals (*d*).

To take care of the goods committed to his charge.

4. The factor will carefully deposit and preserve, in the shop or warehouse for the time being made use of for the purpose of the said agency business, all such goods, wares, and merchandise, as may be sent or transmitted to him by the principals.

To procure best sale for ready money or to persons of good credit.

5. In managing and conducting the said agency, the factor will use his best endeavours to procure the greatest possible sale of the —— and other goods which he shall be employed to sell as such factor as aforesaid, either for ready money, or to persons whom, after due inquiries, he shall ascertain to be persons of responsibility, and worthy to be trusted; And, upon making every such inquiry, will make a minute or memorandum thereof, in a book to be kept for that purpose, specifying the name of the person applying to purchase on credit, the name or names of the person or persons applied to for the purpose of knowing whether such person might be trusted with safety, and also specifying what was said upon the subject by such person or persons so applied to.

(*d*) As to agreement in restraint of trade, see *post*, Prec. X., p. 35, note (*t*). An agent must account for secret profits made by him in the course of his agency: see *Imperial, &c. Association* v. *Coleman*, L. R. 6 H. L. 189; *Kimber* v. *Barber*, L. R. 8 Ch. 56; *Williamson* v. *Hine*, [1891] 1 Ch. 390; *Gluckstein* v. *Barnes*, [1900] A. C. 240; and so must a sub-agent: see *Powell* v. *Evan Jones & Co.*, [1905] 1 K. B. 11.

VII. TO EMPLOY A FACTOR.

Limits as to giving credit.

6. The factor will not give credit to any person or persons for a greater length of time than ——, without the consent in writing of the principals; And will not, without such consent, sell to any person on credit to a greater amount than the sum of £——;

Not to pledge goods or compound debts, &c.

And will not, without such consent, pledge any goods or merchandise transmitted to him as aforesaid (*dd*), or release or compound any debt, claim, or security relating to the premises, or abandon or compromise any action or other proceeding in respect of any such debt, claim, or security.

To act according to directions of principals.

7. The factor will, in conducting the said agency, conform to such orders, instructions, and directions, as he may from time to time receive from the principals; And where he shall receive no special orders or directions, will act in such manner as he shall judge to be most conducive to the advantage of the principals.

To account for and transmit moneys, &c. received to principals.

8. The factor will, from time to time, account for and transmit to the principals all moneys, bills, and securities for money, received from the sale of any ——, or other goods sold by the factor, as such factor or agent as aforesaid.

To accept principals' bills when he has assets in hand (*e*).

9. The factor will, from time to time, in case he has assets in his hands, accept and duly pay all such bill and bills of exchange as may be drawn upon him by the principals, and of which he may receive due notice from them.

To transmit monthly account of affairs to principals.

10. The factor will, from time to time, on the first day of every month, send and transmit to the principals a full, clear, and correct statement in writing of all orders, both taken and executed, and of all goods which may have come to his hands; and also of all such goods as he may have sold, to whom, and whether for ready money, or on credit; and likewise of all such other matters, transactions and things as in anywise concern the said agency business, and which may have taken place during the preceding month.

To keep account books.

11. The factor will keep books of account, in which shall be made plain and correct entries of all goods received from the principals, and also of all goods sold and delivered by him, the factor, as such factor or agent as aforesaid, and also of all orders received and taken; and of all other matters, transactions, and things in anywise concerning the said agency business: And will,

(*dd*) See *Weiner* v. *Harris*, [1910] 1 K. B. 285; *Portalis* v. *Tetley*, L. R. 5 Eq. 140; and the Factors Act, 1889.

(*e*) The factor should be careful to sign on behalf of his principals or in a representative character: see Bills of Exchange Act, 1882, s. 26; and see also *Chapman* v. *Smethurst*, [1909] 1 K. B. 927.

VII. TO EMPLOY A FACTOR.

on the —— day of ——, and the —— day of ——, in each and every year, unless either the said days shall happen on a Sunday, and in that case on the day following, accurately cast up and balance the said books of account, in order that the true state of the said agency business may clearly appear therefrom.

To balance account books every half-year.

12. It shall be lawful for the principals, or any of them, at all seasonable hours in the day-time, to have free access to the said books of account, and to all other books, papers, documents, and writings in anywise touching or concerning the said agency business; and to take copies of or extracts from the same or any of them; And which books of account, papers, documents, and writings, he, the factor, will carefully preserve (damage by fire and other inevitable accidents only excepted); and, upon the final settlement and winding-up of the said agency business, will give and deliver up the same books, documents, and writings, undefaced and unobliterated, to the principals, or other the person or persons lawfully entitled thereto.

Principals to have access to inspect the accounts, &c.

Account books to be carefully preserved.

13. Upon the taking of every half-yearly account, as provided by clause 11 hereof, a copy of such account, signed by the factor [and verified by the statutory declaration of himself, or of the person or persons whom he shall have employed to make up the said account], shall be forwarded to the principals, and shall, unless the principals, or any of them, shall within —— days after the receipt thereof object to the same, and notify such objection in writing to the factor, be deemed to be finally settled and binding upon the parties hereto respectively.

Copies of accounts to be forwarded to principals.

14. Upon the settlement of each half-yearly account the factor shall be entitled to receive one ——th share of such a sum as shall by such account be shown to represent the gross profits of the business carried on at the shop or warehouse aforesaid, for the preceding half year.

Factor entitled to share of gross profits (*ee*).

15. The factor may every week, during such time as he shall act as such factor or agent as aforesaid, draw out for his own use, on account of his share in the said gross profits, the sum of £——; but if at the end of any half year it shall appear, upon taking the half-yearly account as aforesaid, that the share of gross profits, to which he is entitled at that date, does not amount to the aggregate of the weekly drawings made by him during the then preceding half year, then he shall within —— days after such

Weekly drawings.

(*ee*) See *ante*, p. 17, note (*z*).

VII. TO EMPLOY A FACTOR.

account shall have been taken as aforesaid, refund the difference, but without interest.

Factor to reside in rooms over warehouse, rent free.

16. The factor, during such time as he shall act as such factor or agent as aforesaid, shall have the exclusive right, with his family and servants, to reside in the dwelling-house, with the appurtenances, over the said shop or warehouse free from the payment of rent, rates, or taxes for the same.

Factor to provide a clerk and porter.

17. The factor will, at his own costs and charges, find and provide a clerk or typist who understands accounts and book-keeping, for the purpose of constantly assisting him, the factor, in the management of the said agency business: And also find and provide a porter for the purpose of assisting in the said business.

Repayment to factor of sums paid for carriage of goods, &c.

18. The principals will pay to the factor, once every six months, all such sums of money as he may have paid, for or on account of books, paper and stationery, made use of in and about the said agency business; And also all such sums as he may have paid for the postage of letters relating to the said agency business; And for the carriage of goods, wares, and merchandise sent to him by the principals.

No other person to be employed as factor.

19. The principals will not themselves sell or employ any other person as a factor or agent in the vending of ——, within the city of London, during such time as the said factor shall act as such factor or agent as aforesaid.

Factor not to be answerable for involuntary losses.

20. The factor shall not be answerable for any loss or damage which may happen to or be incurred in or about the said business conducted by him as such factor or agent as aforesaid, unless such loss or damage happen through his wilful neglect or default.

Power for factor to determine agreement on giving six months' notice.

21. In case the factor shall, at any time before the expiration of the said term of —— years, be desirous of giving up the said agency business, it shall be lawful for him so to do, upon giving six calendar months' previous notice in writing of such his intention to the principals, or by leaving such notice at their usual places or place of abode or business.

Power for principals to discharge factor, on giving six months' notice (*f*).

22. If the principals shall, at any time before the expiration of the said term of —— years, be minded and desirous to discharge the factor from being such factor or agent as aforesaid, it shall be lawful for them so to do upon giving to him six calendar months'

(*f*) In the absence of a contrary provision reasonable notice must be given: see *Re African Association, Ltd.*, [1910] 1 K. B. 396.

previous notice in writing of such intention, or upon leaving such notice at the shop or warehouse for the time being made use of by the factor in the said agency business, anything herein contained to the contrary notwithstanding.

Proportionate allowance in lieu of profits in case of death, &c.

23. In case of the death of the factor before the expiration of the said term of —— years, or of his resignation or discharge as hereinbefore provided, his executors or administrators, or himself, as the case may be, shall immediately upon the happening of any such event be entitled to receive a proportionate allowance in lieu of profits to be calculated as from the last preceding half-yearly account taking, and according to the share of profits (if any) of the factor as shown by the same account taking. If, at the time of the happening of any such event as in this clause mentioned no half-yearly account shall have been taken, a special account shall be taken for the purpose of ascertaining the allowance to be made.

Arbitration clause.

24. If at any time the principals or any of them shall object to the half-yearly accounts rendered and forwarded to them in manner aforesaid, or if any dispute or difference shall at any time arise between the factor or his executors or administrators, on the one part, and the principals or any of them, on the other part, for or on account of any matter or thing herein contained which shall not within one calendar month after the same shall arise be fully decided between the parties in difference themselves, then and in every such case, the matter of every such account, difference or dispute shall be referred to the hearing of three indifferent persons, to be chosen, one by the factor or his executors or administrators, another by the person or persons in difference or dispute with him or them, and a third by the two first persons so first chosen: And this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force.

Power of attorney to factor to receive debts.

25. And they, the principals, by these presents, appoint the factor their attorney, for them, and in their names or otherwise, and for their use, to ask, sue for, recover and receive, all and every such sum and sums of money as shall or may be due or owing from any person or persons, for or on account of any goods or merchandise sold by him as their agent or factor as aforesaid, and to give receipts and sufficient discharges for the same; and any attorney or attornies under him the factor to substitute and appoint, and such substitution and appointment at pleasure to

VII. TO EMPLOY A FACTOR.

revoke; they the principals hereby ratifying and confirming all and whatsoever he the factor or any such substituted attorney or attornies shall lawfully do or cause to be done in and about the premises (*g*).

No partnership created.

26. Nothing herein contained or to be done in pursuance hereof shall be construed or taken in any way to constitute a partnership between the factor and the principals, or to give to or impose upon the factor any of the rights or liabilities of a partner in the same business (*h*).

IN WITNESS, &c.

VIII. AGREEMENT *for the* EMPLOYMENT *of a* MANAGER *of a Limited Company at a fixed Salary and Commission on Profits* (*i*).

ARTICLES OF AGREEMENT, made this —— day of ——,

Parties.

BETWEEN the —— Company (Limited), whose registered offices are at ——, of the one part, and A. B., of, &c., of the other part. WHEREBY it is agreed by and between the said parties hereto as follows:—

Agreement for service and salary.

1. The said A. B. who since the —— day of —— last has been, shall henceforth continue to be one of the general managers in London of the said —— Company (Limited) (hereinafter called "the company"), for the term of seven years, to be computed from the —— day of —— aforesaid, if he shall so long live, at a salary of £—— a year for the first year of the said term, and of £—— for every subsequent year of the said term, and the company shall pay such respective salaries to the said A. B. (hereinafter called "the manager"), by equal quarterly payments, on the —— day of ——, &c., in each year, or within —— days after the said payments shall become due respectively, and shall pay to his executors or administrators a proportional part of the said salary for the interval between the last quarter day and the death of the said manager; which part shall be payable on the next day of payment as aforesaid.

Commission on surplus net profits.

2. During such term of seven years, whenever, not being less

(*g*) As to the power of a factor to pledge the property of his principal, see *Portalis* v. *Tetley*, L. R. 5 Eq. 140; and the Factors Act, 1889 (52 & 53 Vict. c. 49).

(*h*) This clause is merely declaratory, as this agreement does not create a partnership: *Walker* v. *Hirsch*, 27 Ch. D. 460.

(*i*) Stamp, 10*s*.

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frequently than once in every year, an account of the company's business shall be made up for the purpose of showing the net profit made by it for some then bygone period, and there shall appear according to such account to have been made a net profit in such period over which such account shall extend, exceeding the rate of —— per cent. per annum on the paid-up capital for the time being, the company shall pay to the said manager, in addition to his said salary, a commission of —— per cent. on the amount of such net profit beyond the said rate of —— per cent. per annum on the paid-up capital of the company for the time being.

Determination of engagement on manager's bankruptcy, &c.

3. If the said manager shall at any time before the expiration of the said term of seven years be adjudicated bankrupt, or fraudulently misappropriate any of the assets of the company, or be guilty of any gross default or misconduct in his office, then immediately on the happening of any such event this agreement shall cease and determine, but without prejudice to any right of action or suit which may have accrued; but if in any other case, the company shall during the said term of seven years remove the said manager from his said office, then the company shall nevertheless pay to him, during the residue of the said term of seven years, or till his earlier decease, the amount of the said salary by equal quarterly payments as aforesaid, and with such proportional part as aforesaid, but not the said commission for any period after such removal; the payment of the said salary in manner aforesaid to be as and for ascertained and liquidated damages for such removal: PROVIDED ALWAYS that the said manager shall be considered as removed from his said office within the meaning of this clause if the company shall at any time during the said term of seven years be dissolved or wound up, or the business thereof be discontinued, in such manner that the said manager shall thereby cease to be employed in his said office without being appointed in lieu thereof a manager on the same or better terms of any company to which the business of the said company shall have been transferred, and the time of his so ceasing to be employed shall be considered to be the time of such removal. PROVIDED ALSO that in such case all then future payments of the said salary shall become due and payable immediately on the commencement of such winding-up or process of dissolution, or on such discontinuance of the business of the said company as if the said term had expired, and the said manager had lived to the end thereof, and may be sued for and recovered by him accordingly.

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Proportionate allowance in respect of commission in event of manager's death.

4. In the event of the termination of the engagement hereby made by the death of the said manager during the said term of seven years, or his removal from his said office for any cause other than his bankruptcy, or such default or misconduct as aforesaid, the company shall forthwith pay to his executors or administrators, or to him as the case may be, and in the event of the said manager continuing to be one of such general managers as aforesaid, during all the said term the company shall pay to him a commission at the rate in the second clause hereinbefore mentioned on such excess, if any, as in the same clause mentioned on the net profit made from the foot of the last account of such profit till the time of such death or removal of the said manager, or to the expiration of the said term, as the case may be; provided that it shall not under that clause be necessary for the company to make out any special account for the purpose of ascertaining the amount of such commission, but that such commission shall be payable at the next time when in the ordinary course of the management of the company, not being less frequently than once in every year, an account of net profit would be made out, and the amount shall be determined by the net profit during the period covered, or which ought to be covered by such account, according to the said ordinary course of management, and in proportion to the length of that part of the same period for which such commission shall be payable.

Conduct of business.

5. The said manager shall diligently and faithfully serve the company, and promote the success thereof to the best of his ability in the office of one of its general managers in London during the said term of seven years, if he shall so long live, devoting his whole time and attention to the business of the company and the duties of the said office, except [as hereinafter provided and] so far as he may be incapacitated by illness from so doing, and except on Sundays, or Good Fridays and Christmas Days, and Bank Holidays, and on Saturdays when there shall be no special exigency to the contrary, and during such reasonable holidays as may from time to time be agreed on between him and the company or the directors thereof.

Manager to act according to directions of the company or its directors, &c.

6. The said manager shall, whilst in such service as aforesaid, conform himself to all lawful and reasonable directions, whether general or special, as to the conducting by him as one of such managers as aforesaid of the business of the company, which may from time to time be given to him, either by the company or by

the directors thereof, and shall not divulge any secret of the company to any person, partnership, or corporation dealing with the company, and shall duly give directions for proper entries to be made in the books of the company, kept for that purpose, of all money, receipts, payments, dealings, and transactions which shall be given, made, entered into, or authorised by him touching or affecting the company, and shall duly account for all moneys received by him on account of the company, and shall keep or cause to be kept, at the offices of the company or elsewhere, as the directors thereof shall appoint, all correspondence, vouchers, and other documents which may concern the company, and ought in the ordinary course of business to be preserved, and shall at all times afford to the directors and all other members of the company entitled to demand the same, full explanations as far as may be in his power, of any dealings or transactions of or affecting the company. VIII. EMPLOYMENT OF A MANAGER.

7. During the said term of seven years, except in case of his removal from his said office for any cause other than his bankruptcy or such default or misconduct as aforesaid, the said manager shall not carry on or be concerned with any other person or persons carrying on, or be a director of any company carrying on, or be employed by any person or persons or company carrying on, or except under this agreement be in any way engaged or concerned or interested (*k*) in any such trade or business as the company shall for the time being be carrying on; provided that nothing in the present clause contained shall be construed so as to restrict the previous provision for the devotion of his whole time and attention by the said manager to the business of the company [*or*, be construed so as to apply to any interest or connection of the said manager as capitalist or accountant, but not as a partner in or with the firm or house of ——, or the person or persons constituting that firm or house from time to time]. Manager not to engage in other business.

8. The company shall at least once in every of the said seven years, or within six weeks from the end of each such year, make out a true and just account so as to show what profit has been made by it, and shall make out the first of such accounts for a period commencing with the said —— day of —— last past, and every Company to furnish manager with account of profits.

(*k*) As to the effect of a covenant not to become "concerned" or "interested" in a business, see *Smith* v. *Hancock*, [1894] 1 Ch. 377; *Gophir Diamond Co.* v. *Wood*, [1902] 1 Ch. 950; *Cory & Son, Ltd.* v. *Harrison*, [1906] A. C. 274; *Cavendish* v. *Tarry*, 52 Sol. J. 726.

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subsequent account for a period commencing at the end of the period for which the last preceding account shall have been made out.

Copy of account signed by manager to be conclusive.

9. A copy of every annual account shall be furnished to the manager, and shall, unless he shall have given notice in writing to the secretary of the company of his intention to object to the same, be signed by him within —— days after the taking of such accounts; and the account so signed shall be deemed to be finally settled and to be conclusively binding on the manager and all persons claiming under him, except that if and whenever any manifest error shall be found therein, within six calendar months after its being so signed, such error shall be ratified (*l*).

As WITNESS, &c. (*m*).

IX. AGREEMENT *to pay for* GOODS *to be* FURNISHED *to a* THIRD PERSON (*n*).

Parties.

AGREED this —— day of ——, BETWEEN A. B., of, &c., of the one part, and C. D. and E. F., both of, &c., warehousemen,

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(*l*) If an arbitration clause is desired, the form given *ante*, p. 7, clause 15, may easily be adapted.

(*m*) As to the formalities to be observed in making contracts on behalf of a company, see Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 76.

(*n*) No stamp required, as it relates to the sale of goods: see *ante*, p. 2. An agreement of this nature is required to be in writing. An undertaking to pay for goods furnished to, or money paid on behalf of an infant, is original, not collateral, for the infant cannot be liable, and there is no privity between the infant and the person who furnished the goods, or paid the money: *Harris* v. *Huntback*, 1 Burr. 373. An agreement of this kind is often contained in a letter, and may then be expressed as follows:—

[" *Date.*]

" Gentlemen,—In consideration of your agreeing to supply my son, A. B., with goods on credit, on my guarantee hereinafter contained, I hereby undertake to be answerable for the current balance, which shall or may at any time be due from him to you on account of such goods, not exceeding the sum of £——: and this guarantee shall not be affected by the death or retirement of any member of your firm, or the addition of any partner or

trading under the firm of D. & Co., of the other part, as follows:—

IX. GUARANTEE OF PAYMENT FOR GOODS TO BE SUPPLIED TO THIRD PERSON.

WHEREAS the said A. B. has requested C. D. and E. F., trading under the style or firm of D. & Co., to supply G. H. (a relative of the said A. B.), with goods on credit, which he has consented to do on A. B. entering into the agreement hereinafter contained. NOW THEREFORE, in consideration of the premises, A. B. hereby undertakes and agrees with C. D. and E. F., to pay unto C. D. and E. F. or their successors in the said firm, all and every such sum and sums of money, as shall from time to time be due from G. H. to the said firm, for goods sold and delivered unto, or on the account, or for the use of G. H., not exceeding on the whole the sum of £——: PROVIDED nevertheless, that this guarantee shall not be considered as satisfied in the whole or in part by the payment by G. H. of any sum or sums of money, on account of goods to be supplied to him as aforesaid, but shall continue and extend to cover the balance for the time being due from the said G. H. to the said firm on the account aforesaid, not exceeding the amount hereinbefore mentioned (*o*). This guarantee may be revoked at any time, and shall be deemed to be revoked upon notice being given to the said C. D. and E. F. of the death of the said A. B., but shall remain in force up to the time of such revocation (*p*).

AS WITNESS, &c.

X. AGREEMENT *for* SERVICE *as an* ASSISTANT *to a* MEDICAL PRACTITIONER (*q*).

ARTICLES OF AGREEMENT, made the —— day of ——, 19—, BETWEEN A. B., of, &c., physician and surgeon (hereinafter Parties.

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partners thereto, but shall extend to the goods supplied by the firm so altered; nor shall this guarantee prevent my said son from being liable to pay for any goods so furnished to him as aforesaid. I am, &c."

[*Signature.*]

(*o*) See *Ellis* v. *Emmanuel*, 1 Ex. D. 157.

(*p*) In the absence of express stipulation the guarantee will not be revoked merely by the death of the guarantor: see *Re Crace*, [1902] 1 Ch. 733.

(*q*) Stamp, 6*d.*, if not under seal.

X. FOR SERVICE AS ASSISTANT TO A MEDICAL PRACTITIONER.

called "the employer"), of the one part; and C. D., of, &c. (hereinafter called "the assistant"), of the other part.

Agreement to employ and serve.

1. The employer agrees to employ the assistant, and the assistant agrees to serve the employer as assistant in his profession and practice of physician, surgeon, and general medical practitioner, from the —— day of ——, for the period of —— years and thereafter, unless and until this engagement is terminated as hereinafter provided.

Faithful and diligent service.

2. So long as the assistant shall remain in the service of the employer, he shall give his whole time to such service, and shall serve the employer faithfully and diligently, and to the best of his ability promote the interests of the employer, and shall at all times obey and comply with his lawful commands and directions in relation to the said profession and practice.

Secrets of the business.

3. The assistant shall not, without the consent of the employer, disclose any of the secrets or affairs of the said profession or practice.

Absence from service.

4. The assistant shall not at any time, without the consent of the employer [except by reason of sickness or inevitable accident] absent himself from such service as aforesaid [and in case the assistant shall be absent from such service by reason of sickness or inevitable accident for more than —— days, the employer may, if he thinks fit, appoint a substitute, and remunerate him out of the salary of the assistant] [and if the assistant shall absent himself from such service without the consent of the employer for any cause other than sickness or inevitable accident, then, for every day of such absence he shall pay to the employer the sum of £—— as liquidated damages].

Salary.

5. The employer shall during such service as aforesaid, pay to the assistant, so long as he duly and faithfully performs the agreements on his part herein contained, a salary of £—— per annum, and so in proportion for any less period than one year by equal quarterly payments, the first payment to be made on the —— day of ——.

Termination of engagement (*r*).

6. Either party may determine this engagement at any time after the —— day of —— by giving to the other party —— calendar months' notice in writing, expiring at any time after such day, or leaving such notice, addressed to such other party, at the surgery or place of business of the employer.

(*r*) See *ante*, p. 26, note (*f*).

X. FOR SERVICE AS ASSISTANT TO A MEDICAL PRACTITIONER.

7. The assistant shall not at any time during such service as aforesaid, or within —— years after he shall have left such service, practise, carry on, or be interested in (*s*) the profession or practice of a physician, surgeon, accoucheur, or apothecary, or general medical practitioner, at —— aforesaid, or within —— miles thereof, either directly or indirectly, in his own name or in the name or names of any other person or persons, or enter into the service of any person or persons other than the employer as assistant or otherwise, in, or in relation to any such profession or practice within the limits aforesaid, or endeavour or attempt, directly or indirectly, to induce any person or persons to cease from consulting or employing the employer, or to consult or employ any person or persons other than the employer within the limits aforesaid, in the way of his profession or practice (*t*).

Agreement not to practise in district,

or solicit customers.

AS WITNESS, &c.

(*s*) See note (*k*), p. 31, *ante;* and as to the effect of a covenant "not to practise," see *Sewell* v. *Wright,* 50 Sol. J. 223; and *Robertson* v. *Willmott,* (1909) W. N. 155.

(*t*) "Agreements in restraint of trade are against public policy and void unless the restraint they impose is partial only and they are made on good consideration and are reasonable": *Collins* v. *Locke,* 4 App. Cas. at p. 686. The restraint must be "partial," *i.e.,* not unlimited both as to time and space (*Davies* v. *Davies,* 36 Ch. D. 359), and "reasonable," *i.e.,* reasonably necessary for the protection of the particular business: *Nordenfelt* v. *Maxim Nordenfelt, &c. Co.,* [1894] A. C. 535; *Morris & Co.* v. *Ryle,* 54 Sol. J. 748; *Leetham & Sons, Ltd.* v. *Johnstone-White,* [1907] 1 Ch. 322. As to what is "reasonable," see *Robinson & Co., Ltd.* v. *Heuer,* [1898] 2 Ch. 451; *Underwood & Co., Ltd.* v. *Barker,* [1899] 1 Ch. 300; *Haynes* v. *Doman,* [1899] 2 Ch. 13; *Ehrman* v. *Bartholomew,* [1898] 1 Ch. 671. The restraint may be unlimited as to time: *Haynes* v. *Doman,* [1899] 2 Ch. 13, *ubi sup.* As to limitation as to space, see *Leather Cloth Co.* v. *Lorsont,* L. R. 9 Eq. 345; *Rousillon* v. *Rousillon,* 14 Ch. D. 351; *Badische, &c. Fabrik* v. *Schott,* [1892] 3 Ch. 447; *Nordenfelt* v. *Maxim Nordenfelt, &c. Co.,* [1894] A. C. 535, where the whole subject is discussed at length. Where a limit of space is fixed the distance must be measured in a straight line: *Mouflet* v. *Cole,* L. R. 8 Ex. 32. As to the restriction on soliciting customers being confined to customers at the time of the agreement or during the period of service, see *Baines* v. *Geary,* 35 Ch. D. 154; *Dubowski & Sons* v. *Goldstein,* [1896] 1 Q. B. 478; and as to whether the agreement is severable when part of it is good, see *Baines* v. *Geary, ubi sup.; Baker* v. *Hedgecock,* 39 Ch. D. 520; *Davies* v. *Davies,* 36 Ch. D. 359; and *Dubowski* v. *Goldstein, ubi sup.* A covenant or agreement in restraint of trade will be enforced against an infant if the agreement as a whole

Agreements in restraint of trade.

XI. TO EXECUTE ACCOMMODATION WORKS.

XI. DEED OF AGREEMENT *by a* RAILWAY COMPANY *to execute* WORKS *for the* ACCOMMODATION *of the* OWNER *of* LANDS *adjoining the* RAILWAY.

THIS INDENTURE (*u*), made the —— day of ——, 19—,

Parties. BETWEEN the X. and Y. Railway (hereinafter called "the company"), of the one part, and A. B., of, &c. (hereinafter called "the owner"), of the other part:

Recitals; of agreement for sale of lands to company; WHEREAS the owner is seised of or otherwise entitled for an estate in fee simple in possession to (amongst other hereditaments) the several pieces of land and hereditaments described in the schedule hereto, and which being required by the company for the purposes of their works were recently agreed to be purchased by them:

of conveyance to company; AND WHEREAS by an indenture bearing even date with, but to be executed after, this agreement the said pieces of land and premises are intended to be conveyed unto and to the use of the company and their assigns:

of agreement to execute works, &c. AND WHEREAS upon the treaty for the said purchase it was agreed that the company should make the payments and execute the several accommodation and other works hereinafter mentioned respectively, and should enter into the stipulations hereinafter contained and on their part to be observed and performed:

NOW THIS INDENTURE WITNESSETH, and it is hereby agreed and declared, and the company do hereby (so far as relates to the stipulations on their part to be observed and performed) covenant with the owner in manner following, that is to say:

Interpretation clause. 1. In this agreement the term "owner" includes the owner and his heirs and assigns, and the term "the company" includes the X. and Y. Railway Company and their successors and assigns.

To make and maintain road, gates and culverts. 2. The company shall previously to the opening for traffic of the said intended railway or any part thereof, make and for ever after maintain, fit for the convenient passage thereover respectively of agricultural waggons, locomotives, and carriages, such roadways or paths each of the width of ten feet at the least, with

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is for his benefit: *Evans* v. *Ware*, [1892] 3 Ch. 502; *Bromley* v. *Smith*, [1909] 2 K. B. 235; but not where the restriction is wider than is reasonably necessary for the protection of the plaintiff's interest: *Leng & Co., Ltd.* v. *Andrews*, [1909] 1 Ch. 763. For the law as to agreements in restraint of trade, see, further, Norton on Deeds, 570 *et seq.*; and *Mitchel* v. *Reynolds*, 1 Smith, Leading Cases, 11th ed. 406; and see *Wilson* v. *Harper*, [1908] 2 Ch. 370.

(*u*) Stamp, 10*s*.

such culverts and works thereunder respectively as are next hereinafter mentioned or referred to [*describe these works in detail*]: AND ALSO shall at their own cost make, and for ever maintain in good and sufficient repair and condition, suitable gates, each of sufficient width for the passage of such waggons, locomotives, and carriages, over or upon all the several roadways or paths hereinbefore mentioned: AND ALSO shall at the like cost make, and in like manner maintain in good and sufficient repair, culverts, tunnels, and other necessary works under the said several roadways or paths, so as that the same respectively shall not in any way hinder or obstruct the free passage of water through the several drains or ditches over which the same roadways or paths shall respectively pass.

XI. TO EXECUTE ACCOMMODATION WORKS.

3. The company shall make, and for ever maintain and keep open two main drains to be made parallel with and adjoining to the said intended railway, the one on the eastern and the other on the western side thereof, so that an effectual watercourse may be maintained and continued along the said intended railway for such distance as the same shall pass through or adjoin upon lands belonging to the owner.

To make and maintain drains.

4. The company shall make, and for ever maintain, and keep in good repair for the purpose of carrying off the water from such of the lands lying adjacent to the said pieces or parcels of land described in the schedule hereto, as are situate on the eastern side of the said intended railway a circular tunnel under the same railway of the width or diameter throughout of —— feet at the least, to run between the pieces of land first and secondly described in the said schedule, and to be in the same position and direction as nearly as circumstances will permit as is the drain or ditch which now separates the same pieces of land respectively the one from the other, which position and direction are delineated in the plan drawn in the margin of these presents by a line or mark coloured blue.

To make and maintain tunnels.

5. The company shall make, and for ever repair and maintain fit for use and suitable for the passage thereover respectively of agricultural waggons, locomotives, and carriages, the several passages or crossings, each of the width of ten feet, over or across the said intended railway and the works thereof next hereinafter mentioned (that is to say), First, one such passage or crossing over or upon the piece of land firstly described in the schedule hereto,

To make and maintain crossings.

XI. TO EXECUTE ACCOMMODATION WORKS.

at the northern end thereof and immediately adjoining to the station which is intended to be erected and built by the said company on land lying on the eastern side of the same piece of land, which said passage or crossing is delineated in the said plan drawn in the margin of these presents by a line coloured red [*describe in a similar manner the other crossings*].

The company not compellable to make further accommodation works.

6. The company shall not, by reason of the purchase by them of the said pieces of land and hereditaments described in the schedule hereto, be liable or compellable by virtue of the Railways Clauses Consolidation Act, 1845, or otherwise howsoever, to make, construct, or erect for the accommodation of the owner any works whatsoever, other than those hereinbefore agreed to be made by them.

How works to be completed.

7. All the works hereinbefore agreed to be made by the company shall be executed by them and at their own cost, to the satisfaction of Mr. ——, of, &c., or other the surveyor for the time being of the owner, and shall be completed within —— months from the date of this agreement.

As witness, &c.

The Schedule above referred to.

XII. AGREEMENT *as to the* Enjoyment *of* Light *on* Sufferance (*x*).

Introductory recital.

AN AGREEMENT, made the —— day of ——, 19—, Between A. B., of, &c., of the one part, and C. D., of the other part. Whereas the said A. B. has lately opened out —— windows or lights from his shop and premises in —— street, in the city of ——, which face into or overlook the back yard or grounds of a dwelling-house or tenement, whereof the said C. D. is now possessed in fee simple. Now, the said A. B. hereby admits and declares that the said windows or lights hereinbefore mentioned are opened out and remain upon the leave or indulgence of the said C. D.: And said A. B., in consideration of the said leave or

(*x*) Stamp, 6*d.*, if not under seal. If under seal, 10*s.* If a rent is reserved it will be stamped as an agreement for a lease: see *sub tit.* "Leases," Prelim. Note, *post*, p. 506.

XII. TO PERMIT ENJOYMENT OF LIGHT ON SUFFERANCE.

indulgence hereby agrees with the said C. D. that he the said A. B., his heirs [*or*, executors, administrators] or assigns, will at any time hereafter, upon the request in writing of the said C. D., his heirs or assigns, wall or block up the said windows or lights: [AND FURTHER, that until the same shall have been so walled or blocked up, he the said A. B., his heirs [*or*, executors, administrators] or assigns, will pay to the said C. D., his heirs or assigns, the yearly sum of £——, payable half-yearly, on the —— day of ——, and the —— day of ——, the first payment to be made on the —— day of —— next.]

IN WITNESS, &c. (*y*).

XIII. AGREEMENT *to permit the* CONTINUANCE *of* OBSTRUCTION *to* ANCIENT LIGHTS (*z*).

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part. WHEREAS there are two ancient window lights on the south side of the dwelling-house of the said A. B., situate at —— aforesaid, and which window lights have been totally obstructed by a dwelling-house and premises which the said C. D. has lately erected upon his lands adjoining thereto; AND WHEREAS it has been agreed between the said A. B. and C. D., for the purpose of preventing disputes between the owners and occupiers of the said two dwelling-houses, to enter into the agreement

Parties.

Recital of having ancient lights, and obstruction by buildings.

To prevent disputes,

(*y*) It is generally advisable, though not absolutely necessary, that a document of this nature should be under seal, so as to bind the heirs and real estate, as well as the executors and administrators and personal estate of the dominant owner, *i.e.*, the owner of the windows. See the Conveyancing Act, 1881, s. 59. See *tit.* "Leases," Preliminary Note on Stamps. This precedent is adapted from the document which, in the case of *Bewley* v. *Atkinson*, 13 Ch. D. 283, was held to be effectual to prevent the dominant owner from acquiring any right to the access and use of light by prescription under sect. 3 of the Prescription Act (2 & 3 Will. 4, c. 71). See, too, *Greenhalgh* v. *Brindley*, [1901] 2 Ch. 324. The agreement will be valid if signed by the dominant owner only; but it is advisable that the agreement be executed in duplicate by both parties, so as to insure, as far as possible, its coming to the notice of the successors in title of the dominant owner.

(*z*) Stamp, 6*d.*, if not under seal. If under seal, 10*s.*

XIII. TO PERMIT OBSTRUCTION TO ANCIENT LIGHTS.

following. NOW THESE PRESENTS WITNESS as follows, that is to say, first, that the said C. D. on his part admits that the said A. B. was well entitled to the said window lights; AND, secondly, that in consideration of the said admission and declaration by the said C. D., and in further consideration of the sum of £——, paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. on his part agrees that the said window lights shall and may for ever remain obstructed as before mentioned: AND he hereby releases the said C. D., his heirs and assigns, from All actions, suits, claims and demands whatsoever, on account thereof.

admission of right to lights, and agreement to allow obstruction. Release of all actions, &c.

IN WITNESS, &c. (*a*).

XIV. AGREEMENT *between* ADJOINING OWNERS *as to* INTERFERENCE *with* ANCIENT LIGHTS *by* NEW BUILDINGS (*b*).

AN AGREEMENT (*c*), made the —— day of ——, 19—, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part.

Parties.

WHEREAS the said A. B. is the owner in fee simple of a piece of land situate in X. Street, in the parish of ——, in the county of ——, on which certain houses recently pulled down formerly stood.

Recital of A. B.'s title.

AND WHEREAS the said C. D. is the owner in fee simple of certain houses situate in Y. Street, in the same parish, which houses have their backs towards the said houses of the said A. B., the respective properties of the said A. B. and C. D. being separated by a dividing wall.

Recital of C. D.'s title

AND WHEREAS the said A. B. intends to erect on the said piece of land, of which he is owner as aforesaid, buildings of a greater height than those recently pulled down, whereby (as alleged by the said C. D., though not admitted by the said A. B.) the ancient

Proposal to erect new buildings by A. B.

(*a*) See note (*y*), p. 39.

(*b*) The restrictive conditions contained in this agreement may require to be registered in the case of registered land in respect of both properties under L. T. R. 223.

(*c*) Stamp, if under hand only, 6*d.*; but if under seal, 10*s.*: see *ante*, p. 38, note (*x*), and p. 39, note (*y*).

lights of the houses of the said C. D. in Y. Street will be interfered with.

Agreed plans.

And whereas plans and elevations of the said houses so pulled down, and of the new buildings so proposed to be erected as aforesaid, have been submitted to and signed by Mr. ——, the architect of the said C. D., and signed also by Mr. ——, the architect of the said A. B., and are annexed to this agreement, and are hereinafter referred to as "the said plans."

Introductory recital.

And whereas in order to settle disputes and to prevent litigation between themselves, the parties hereto have entered into the arrangement hereinafter appearing.

NOW, in consideration of the premises it is hereby mutually agreed as follows:—

A. B. not to acquire further right to light for new buildings.

1. The said A. B. shall not by reason of the erection of the proposed buildings acquire any further or more extensive right to the access and use of light to or for such buildings than he is entitled to in respect of the houses so pulled down as aforesaid, and any more extensive access or use of light to or for such new buildings than was enjoyed as of right by the buildings so pulled down shall, so far as regards the said A. B. and the persons claiming under him, be deemed to be permissive and enjoyed by consent under this agreement, and the said A. B., or the persons claiming under him, shall have no legal or equitable right, claim, or remedy against the said C. D., or persons claiming under him, for or in respect thereof.

C. D. to be permitted to erect building of equal height on his property.

2. The said C. D., or the persons claiming under him, shall be entitled if and when they shall think fit, without being liable to any action or other proceedings, or any act or hindrance on the part of the said A. B., or the persons claiming under him, to erect on the site of the said houses in Y. Street aforesaid, or any part thereof, any buildings not exceeding in height the said buildings to be erected by A. B. as shown on the said plans.

Consent of C. D. to erection of new buildings.

3. In consideration of the said agreements on the part of the said A. B., the said C. D. hereby authorises and consents to the erection of the said proposed buildings by the said A. B. according to the said plans.

A. B. to give notice of agreement to persons claiming under him.

4. The said A. B., and the persons claiming under him, will by inserting notice of the stipulations hereinbefore contained in favour of the said C. D., and the persons claiming under him, in leases and other muniments relating to the said property of the

XIV. INTERFERENCE WITH ANCIENT LIGHTS.

said A. B., and by all other reasonable means use his and their best endeavours to cause the said stipulations to run with the said property of the said A. B., and bind all persons interested therein as owners, lessees, occupiers, or otherwise (*d*).

In witness, &c.

XV. AGREEMENT *for* Apportionment *of* Rent (*e*).

Parties.

THIS AGREEMENT, made the —— day of ——, 19—, Between [*lessor*], of, &c. (hereinafter called "the lessor"), of the first part; [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the second part; and [*lessee*], of, &c. (hereinafter called "the lessee"), of the third part.

(*d*) The right of access of light to a building (*Harris* v. *De Pinna*, 33 Ch. D. 238), unless enjoyed under an agreement in writing (*Easton* v. *Isted*, [1903] 1 Ch. 405), becomes indefeasible when actually enjoyed (*Cooper* v. *Straker*, 40 Ch. D. 21) without interruption (*Smith* v. *Baxter*, [1900] 2 Ch. 138) for twenty years previous to action commenced disputing the right (*Hyman* v. *Van Den Bergh*, [1908] 1 Ch. 167), and can be acquired even though the owner of the servient tenement is incapable of granting it (*Jordeson* v. *Sutton, &c. Gas Co.*, [1899] 2 Ch. 217). One of two lessees holding under the same landlord can acquire the right against the other lessee and the landlord: *Morgan* v. *Fear*, [1907] A. C. 425; *Richardson* v. *Graham*, [1908] 1 K. B. 39. To create a right of action the interference with the ancient lights must be substantial: *Colls* v. *Home and Colonial Stores, Ltd.*, [1904] A. C. 179; *Cowper* v. *Milburn*, 52 Sol. J. 316; *Ambler* v. *Gordon*, [1905] 1 K. B. 417; *Higgins* v. *Betts*, [1905] 2 Ch. 210; *Jolly* v. *Kine*, [1907] A. C. 1, discussed and explained in *Paul* v. *Robson*, 83 L. J. C. P. 304; but it need not lower the value of the property: *Martin* v. *Price*, [1894] 1 Ch. 276. The question of "interference" depends on the identity of "light," not on the identity of "aperture": *Andrews* v. *Waite*, [1907] 2 Ch. 500; and see, as to the effect on ancient lights of rebuilding on the same or an altered site, the last-mentioned case and the cases therein cited. As to when time begins to run in the case of an unfinished house, see *Collis* v. *Laugher*, [1894] 3 Ch. 659. As to the right to access of air, see *Chastey* v. *Ackland*, [1895] 2 Ch. 389; *Bryant* v. *Lefever*, 4 C. P. D. 172; *Harris* v. *De Pinna*, 33 Ch. D. 238; *Dalton* v. *Angus*, L. R. 6 A. C. at p. 794; *Bass* v. *Gregory*, 25 Q. B. D. at p. 483; *Cable* v. *Bryant*, [1908] 1 Ch. 259. As to the effect of payment of rent (1) under a parol agreement of this nature, see *Plasterers' Co.* v. *Parish Clerks' Co.*, 6 Ex. 630; and (2) under an agreement in writing, see *Bewley* v. *Atkinson*, 13 Ch. D. at pp. 293, 296.

(*e*) This agreement should be under seal and bear a 10*s*. stamp.

XV. APPORTIONMENT OF RENT.

Recital of lease.

WHEREAS by an indenture of lease, dated the —— day of ——, and made between the lessor of the one part, and the lessee of the other part, ALL those three several messuages or tenements, with the yards, gardens, stables, and outbuildings thereto respectively belonging, situate and being Nos. 1, 2, and 3 on the west side of —— Street, in the parish of ——, in the county of —— [*add dimensions and references to plan if necessary*], with the appurtenances, were demised by the lessor to the lessee for the term of —— years, subject to the payment of the yearly rent of 90*l.* thereby reserved, and to the covenants on the lessee's part and conditions therein contained.

Recital of severance of reversion.

AND WHEREAS the said purchaser has acquired by purchase from the lessor the reversion in fee simple, expectant upon the determination of the term granted by the said indenture of lease, of No. 1, —— Street, aforesaid, with the yard, garden, stables, and outbuildings thereto.

Introductory recital.

AND WHEREAS it has been arranged between the parties hereto that the rent reserved by the said lease shall be apportioned in manner hereinafter appearing.

Agreement.

NOW IT IS HEREBY AGREED AND DECLARED between and by the said lessor and lessee for themselves respectively, and for their respective heirs, executors, administrators, and assigns, on the one part, and the purchaser for himself, his heirs and assigns, on the other part, That as from the —— day of ——, the said yearly rent of 90*l.* shall be apportioned as follows:—The yearly rent of 30*l.*, part of the said yearly rent of 90*l.*, shall be the portion thereof payable in respect of the messuage and premises, No. 1, —— Street, aforesaid, with the yard, gardens, stables, and outbuildings thereto: AND the yearly rent of 60*l.*, remainder of the said yearly rent of 90*l.*, shall be the portion payable in respect of the residue of the premises comprised in the said lease (*f*).

IN WITNESS, &c.

(*f*) The apportionment of rent would not be binding on the lessee without his concurrence (*Bliss* v. *Collins*, 5 B. & Ald. 876), though such concurrence is often dispensed with. Sect. 10 of the C. A. 1881, which must be read with sect. 12 of the same Act and sect. 2 of the C. A. 1911, contains provisions making the rent reserved by a lease and the benefit of the lessee's covenants run with the reversionary estate, notwithstanding severance of that estate. As to the operation of these enactments and as to the old law, see Wolst., 10th ed., pp. 54 *et seq.*

XVI. APPORTIONMENT OF PERPETUAL RENTCHARGE.

XVI. DEED OF COVENANT *for the* APPORTIONMENT *of a* PERPETUAL RENTCHARGE (*to be indorsed on the* CONVEYANCE of LAND *subject thereto*).

Parties.

THIS INDENTURE (*g*), made the —— day of ——, 19—, BETWEEN the within-named [*owner of rentcharge*], of, &c., of the one part, and the within-named [*owner of land charged*], of, &c., of the other part; WITNESSETH that for apportioning the yearly rentcharge of 10*l.* mentioned in the within-written indenture, the said [*owner of rentcharge*] hereby covenants with the said [*owner of land*], his heirs and assigns, as follows:—

Apportionment of part of rent on land described in first part of the schedule.

1. That so long as the said [*owner of land*], his heirs or assigns, for the time being entitled to the land and hereditaments described in the first part of the schedule hereto, shall duly and punctually pay the clear yearly sum of 6*l.* at the time at which the said rentcharge is payable, or within twenty-one days thereafter, as the portion of such rentcharge payable in respect of the said lands and hereditaments, then and so often as the said sum of 6*l.* shall be so paid, the said [*owner of rentcharge*], his heirs, executors, administrators, or assigns, shall not in case of the non-payment of the said rentcharge of 10*l.*, or any part thereof, make or procure to be made any distress or entry on the land described in the first part of the schedule hereto, or any part thereof, or any messuage or building thereon, or take or prosecute any actions or other proceedings against the owners, tenants, or occupiers for the time being of the said land and buildings, or any part thereof, or exercise or pursue any other rights or remedies for recovering or compelling payment of the said rentcharge of 10*l.*, or any part thereof, or in anywise disturb or interrupt the said [*owner of land*], his heirs or assigns, or his or their tenants in the possession, enjoyment, or receipt of the rents and profits of the same land and hereditaments, or any part thereof.

Apportionment of the remainder of the rent on the land described in the second part of the schedule.

2. That so long as the said [*owner of land*], his heirs or assigns, for the time being entitled to the land and hereditaments described in the second part of the said schedule, shall duly and punctually pay the clear yearly sum of 4*l.* at the time at which the said rentcharge is payable, or within twenty-one days thereafter, as the portion of such rentcharge payable in respect of the said last-

(*g*) Stamp, 10*s*.

XVI. APPORTIONMENT OF PERPETUAL RENTCHARGE.

mentioned land and hereditaments, then and so often as the said sum of 4*l.* shall be so paid, the said [*owner of rentcharge*], his heirs, executors, administrators, or assigns, shall not, in case of the non-payment of the said rentcharge of 10*l.*, or any part thereof, make or procure to be made any distress or entry on such last-mentioned land and hereditaments, or any part thereof, or any messuage or building thereon, or take or prosecute any action or other proceedings against the owners, tenants, or occupiers for the time being of the said land and buildings or any part thereof, or exercise or pursue as against them, or any of them, any other rights or remedies for recovering or compelling payment of the said rentcharge of 10*l.*, or any part thereof, or in anywise disturb or interrupt the said [*owner of land*], his heirs or assigns, or his or their tenants in the possession, enjoyment, or receipt of the rents and profits of the same land and hereditaments, or any part thereof.

Covenant by owner of rentcharge to indemnify owner of land.

3. And that he the said [*owner of rentcharge*], his heirs, executors and administrators, will at all times keep the said [*owner of land*], his heirs and assigns, and the tenants of the respective lands and buildings described in the 1st and 2nd parts of the said Schedule indemnified against all losses, damages, costs and expenses by reason of any distress or entry being made or any other proceedings being taken to recover or compel payment of the said rentcharge of 10*l.*, or any part thereof, contrary to the covenants hereinbefore contained or either of them (*h*).

In witness, &c.

(*h*) The apportionment can be made by the Board of Agriculture and Fisheries on the application of the parties interested in the land and the rentcharge under the Enclosure Act, 1854, ss. 10—14. Prior to the Law of Property Amendment Act, 1859, the release of part of the land charged with a rentcharge operated as a release of the whole land, but the effect of sect. 10 of that Act is that where the owner of the rentcharge releases a portion of the land charged without the concurrence of the owner of the other portion the rentcharge is not extinguished, but only a proportionate part of the rentcharge can be recovered against the owner of the unreleased portion (*Booth* v. *Smith*, 14 Q. B. D. 318), unless he concurs in the release (*Price* v. *John*, [1905] 1 Ch. 744). As to apportionment between several owners of a rentcharge without the consent of the owners of the land, see *Rivis* v. *Watson*, 5 M. & W. 255. As to the remedies for recovering rentcharges, see C. Act, 1881, s. 44, and C. Act, 1911, s. 6. A rentcharge is a rent within sect. 1 of the Real Property Limitation Act, 1874: *Shaw* v. *Crompton*, [1910] 2 K. B. 370.

XVII. INTENDED WILL NOT DULY EXECUTED.

XVII. FAMILY AGREEMENT, *to give effect to an* INTENDED WILL *which has not been duly Executed* (*i*).

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN Alfred Jones, of, &c., of the first part; Charles Jones, of, &c., of the second part; Elizabeth Fisher, the wife of John Fisher, of, &c., of the third part; and Clara Jones, of, &c., spinster, of the fourth part.

Recitals:

Death, and non-execution of intended will.

WHEREAS John Jones, late of, &c., who died on the —— day of ——, shortly before his death instructed his solicitors to prepare for him his will, a draft of which was prepared, but such intended will was never executed by the said John Jones.

Family.

AND WHEREAS the said John Jones died intestate, and a widower, leaving the said Alfred Jones, his eldest son and heir-at-law, and the said Alfred Jones, Charles Jones, Elizabeth Fisher, and Clara Jones, his only surviving children and sole next of kin.

Desire of parties to carry out intentions expressed in draft will.

AND WHEREAS the said parties hereto are satisfied that the draft which has, for the purpose of identification, been signed by them contained the intended testamentary dispositions of their father the said John Jones, and they are desirous of fulfilling their father's intentions as expressed in the said draft.

Agreement.

NOW THIS INDENTURE WITNESSETH, that in consideration of the premises and in order to avoid questions and disputes as to application and division of the real and personal estate of the said John Jones, IT IS HEREBY AGREED AND DECLARED, and the parties hereto do hereby mutually covenant as follows:—

Division of property.

1. All the real and personal property of the said John Jones, including any property which he had power to appoint by will in favour of the parties hereto, or any of them, shall be administered, divided and dealt with in accordance with the terms and dispositions expressed and contained in the said draft which has

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(*i*) Stamp, 10*s*. This agreement should be under seal. See, as to family arrangements, White & Tudor, L. C., notes to *Stapilton* v. *Stapilton*. As to the necessity for acknowledgment by a married woman in a case not coming within the M. W. P. Act, 1882, see *Nicholl* v. *Jones*, L. R. 3 Eq. 696.

been signed by the parties hereto as aforesaid [and a copy of which is set out in the schedule hereto] (*k*). XVII. INTENDED WILL NOT DULY EXECUTED.

2. Each of them the respective parties hereto and their respective heirs, executors, administrators and assigns, shall execute all such deeds and documents, and do all such acts as may be necessary or expedient in order to carry out this agreement and give full effect thereto. Execution of deeds to carry out agreement.

3. Except for the purpose of enforcing this agreement or any of the terms thereof, no party hereto, his, or her, heirs, executors, administrators or assigns, shall, as being or representing the heir-at-law, or next of kin of the said John Jones, or as claiming in default of appointment under any will or settlement giving the said John Jones any such special powers of appointment as aforesaid, or in any other character, take any action or other proceedings against any other party or parties hereto, or the executors or trustees of any such will or settlement, or any of them, in respect of or reference to any part of the real or personal estate of the said John Jones, or the trust property over which such power of appointment may have been given as aforesaid. No proceedings to enforce claims under intestacy.

4. Letters of administration to the real and personal estate and effects of the said John Jones shall be taken out by the said Alfred Jones, who shall administer and deal with such estate and effects in all respects as if the said John Jones had duly executed the said draft as and for his last will and testament, and letters of administration with the said will annexed had been granted to the said Alfred Jones. Administration to be taken out.

5. The costs of and incidental to the preparation, stamping (*l*) and execution of this agreement, and of all documents necessary or expedient for giving effect thereto, shall be deemed to be expenses attending the execution of the trusts and purposes declared and contained in the said draft. Costs.

In witness, &c.

(*k*) If convenient, a copy of the draft may be set out in a schedule.

(*l*) Any conveyances or transfers required for carrying this agreement into effect would be voluntary dispositions, as to the stamping of which, see Finance (1909-10) Act, 1910, s. 74.

XVIII. SOLE RIGHT OF COMPOUNDING AND VENDING A MEDICINE, &c.

XVIII. AGREEMENT *for the* PURCHASE *of the sole* RIGHT *of Compounding and Vending a* MEDICINE, *in consideration of a* MOIETY *of the* PROFITS *to be paid during* TWELVE YEARS (*m*).

ARTICLES OF AGREEMENT, made this —— day of ——,

Parties.

BETWEEN [*proprietor*], of, &c. (hereinafter called "the proprietor"), of the one part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREBY IT IS AGREED as follows:—

Sale of interest in medicines.

1. The proprietor, for the considerations hereinafter mentioned, hereby grants and assigns unto the purchasers all and singular the right and interest of him the proprietor, of and in certain medicines or preparations called respectively ——, whereof the proprietor is the sole proprietor and owner.

Proprietor to disclose secret by writing of even date.

2. The proprietor shall in a certain paper writing under his own hand, and bearing even date herewith, set forth full, true and perfect recipes for the making up or compounding the aforesaid medicines or preparations respectively.

Not to disclose secret to other persons.

3. The proprietor shall not at any time hereafter disclose or make known to any person or persons whomsoever the recipes whereby the said medicines or preparations, or any of them, may be compounded or made up.

Not to compound medicines.

4. The proprietor shall not at any time hereafter, either by himself or by an agent or otherwise, make up or compound the aforesaid medicines or preparations, or any other of the same description, And shall not permit or allow the same or any of them to be made up or compounded by any person or persons whomsoever, under or by virtue of any licence or authority by him the proprietor heretofore given or granted, or by him to be hereafter given or granted.

Purchasers to pay a moiety of profits to proprietor for a term.

5. In consideration of the aforesaid articles the purchaser shall pay to the proprietor annually one moiety of the net profits arising from the sale of the aforesaid medicines or preparations during the term of twelve years, after which term the purchaser shall be entitled to hold the proprietorship of the said medicines and preparations without account.

To render account annually.

6. The purchaser shall, during the said term of twelve years, render to the proprietors annually, on the —— day of ——, a

(*m*) This agreement should be under seal and bear a 10*s*. stamp.

statement and account of the sale of the said aforesaid medicines or preparations, together with the cost of preparing the same, and the cost of advertising and putting on the market the same, whereby the net profit arising from the sale of the medicines or preparations may be ascertained.

As to expenses of advertising.

7. The expense of advertising and putting on the market the said medicines or preparations during the said term shall not be greater or otherwise than the sum to be agreed on between the purchaser and the proprietor by a memorandum in writing.

Proprietor's share of profits to be paid within fifteen days after rendering account.

8. Within fifteen days after rendering the account mentioned in the sixth article, the purchaser shall pay to the proprietor the share or proportion of the net profit due to him on the said account.

Purchaser not to verify accounts.

9. The proprietor shall not be entitled to call upon the purchaser to produce books in order to verify or prove the accounts to be rendered by him in pursuance of the sixth article, but the purchaser shall, if so required by the proprietor, verify the same by statutory declaration, and the accounts so rendered shall be taken and held to be correct.

In witness, &c.

XIX. AGREEMENT *for the* Sale *of a* Pianoforte *on the* Three Years' Hire System. *In case of* Default, *all* Instalments *paid to be* Forfeited (*n*).

The undersigned hereby hires the —— pianoforte, Class ——, No. ——, belonging to Messrs. —— & Co., of, &c., upon the terms and conditions following:—

1. On the sum of £—— being paid to Messrs. —— & Co., in

(*n*) Stamp, 6*d.*, if under hand only; 10*s.* if under seal: see Finance Act, 1907, s. 7. The custom of letting out pianos on the hire-purchase system has been fully established so as to exclude the doctrine of reputed ownership: see *Ex parte Hattersley*, 8 Ch. D. 601; and pianos so let are protected from distress under the Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), by sect. 4, which excludes the application of the Act to goods comprised in a hire-purchase agreement: see *Shenstone & Co.* v. *Freeman*, [1910] 2 K. B. 84; *Rogers, Eungblut & Co.* v. *Martin*, [1911] 1 K. B. 19. As to furniture in the possession of hotel keepers, see *Ex parte Crawcour* (C. A.), 9 Ch. D. 419; *Crawcour* v. *Salter*, 18 Ch. D.

XIX. SALE OF PIANOFORTE.

—— instalments of £—— each, the first instalment to be paid on the —— day of —— next, and each subsequent instalment at the expiration of each succeeding three months, the pianoforte to belong without further payment to the undersigned.

2. In case of default in the punctual payment of any instalment, or in case the piano shall be removed without the consent in writing of Messrs. —— & Co., or in case the hirer shall become bankrupt, or go into liquidation, or compound with his creditors, the instalments previously paid shall be forfeited to Messrs. —— & Co., who shall thereupon be entitled to resume possession of the instrument, the understanding being that until full payment of the said sum of £——, the pianoforte remains the sole and absolute property of Messrs. —— & Co., and is only lent on hire to the undersigned, who will take all reasonable care of it during the hiring, and in case of damage by fire or otherwise, bear the loss or risk.

Dated this —— day of ——, 19—.

[*Signature of Hirer*].

WITNESS A. B.

APPOINTMENTS.

PRELIMINARY NOTE.

As to stamps.

BY sect. 62 of the Stamp Act, 1891, every instrument whereby property (except on sale or mortgage) is transferred to or vested in any person is to be charged with duty as a conveyance or transfer of property, with a proviso that a conveyance or transfer on the appointment of a new trustee is not to be charged with more than 10*s*. By the schedule to the Act a duty of 10*s*. is imposed on every "conveyance or transfer" not thereinbefore

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30. The agreement does not require to be registered as a bill of sale: *Ex parte Crawcour, ubi sup.* A somewhat similar form of agreement for the purchase of a sewing machine on the hire system will be found in *Singer Manufacturing Co.* v. *Clark*, 5 Ex. D. 37.

described, and under the *tit.* "Appointment" in the same schedule the duty on an "appointment in execution of a power of any property, or of any use, share, or interest in any property by any instrument not being a will" is to be 10*s.* Under the head of "Settlement" there is an exemption from the *ad valorem* settlement duty of instruments of appointment in favour of special objects of the power where duty has been duly paid on the settlement. The duty, therefore, on appointments under special powers appears to be 10*s.* It would seem that appointments under "general powers" operate as a voluntary disposition *inter vivos,* and are chargeable under sect. 74 of the Finance (1909-10) Act, 1910, with the like duty as a conveyance on sale—substituting the value of the property for the amount of the consideration. In the case of special appointments the "disposition" has been previously made by the settlor, and the appointment operates only by way of selection of the objects of the power. The question of stamps on deeds of appointment is a difficult one, and it would be as well in all cases of appointments under a general power to have the stamp adjudicated. The stamp on a revocation in writing, otherwise than by will, of any use or trust, is 10*s.* See Sched. to Stamp Act, 1891, *tit.* "Revocation."

As to appointments under special powers.

By the statute 37 & 38 Vict. c. 37, s. 1, it is enacted that no appointment made after the Act under a power to appoint amongst several objects shall be invalid on the ground that any object has been altogether excluded, thus extending the Illusory Appointments Act, 1830, which allowed a nominal share to be appointed to objects of the power.

In exercising special powers of appointment the following points should be remembered:—

Execution.

First, as to execution, care should be taken to observe the requirements of the instrument creating the power; but as to appointments by will see sect. 10 of the Wills Act, 1837, and as to appointments by deed, 22 & 23 Vict. c. 35, s. 12. See also *Barretto* v. *Young,* [1900] 2 Ch. 339, and the cases there cited; and *Re Barnett,* [1908] 1 Ch. 402.

Perpetuities.

Secondly, in framing the deed, any infringement of the rule against perpetuities should be carefully avoided. See *Re Warren,* 26 Ch. D. 208; *Re Gage,* [1898] 1 Ch. 498; *Re Thompson,* [1906] 2 Ch. 199.

Objects of power.

Thirdly, only persons who are objects of the power can be

included in the appointment; thus, under a power to appoint to children an appointment cannot be made to the issue of a child: *Brudenell* v. *Elwes*, 1 East, 422; or to the child's representatives: *Maddison* v. *Andrew*, 1 Ves. Sen. 382.

Fraud on powers.

Fourthly, the doctrine with respect to frauds on powers (see notes to *Aleyn* v. *Belchier*, White & Tud. L. C.) must be kept in mind; and Fifthly, a special power is fiduciary, and cannot be delegated. See as to this, *Ingram* v. *Ingram*, 2 Atk. 88; *Williamson* v. *Farwell*, 35 Ch. D. 128.

Other points.

Any dealing with the property by the donee of the power inconsistent with the future exercise of the power, releases it: see *Foakes* v. *Jackson*, [1900] 1 Ch. 807; and conf. *Lonsdale* (*Earl of*) v. *Lowther*, [1900] 2 Ch. 687.

A power of revocation reserved by an appointment is not necessarily exercised by a subsequent appointment without revocation under the original power and "every other power": *Re Thursby*, [1910] 2 Ch. 181.

The donee of a special power cannot substitute other trustees for those of the settlements creating the power contrary to the donor's intention (*Re Tyssen*, [1894] 1 Ch. 56; *Re Paget*, [1898] 1 Ch. 286; *Re Purdie*, 48 Sol. J. 524), but under a power to appoint land the donee may appoint trustees to sell and divide the proceeds: *Kenworthy* v. *Bate*, 6 Ves. 793; *Re Paget*, [1898] 1 Ch. 290; *Adams' Trustees and Frost*, [1907] 1 Ch. 695.

As to rescission of appointments on the ground of mistake, see *Hood* v. *Mackinnon*, [1909] 1 Ch. 476; and generally as to the law with respect to powers of appointment see Farwell on Powers. As to releases of powers, see Releases.

PRECEDENTS.

I. APPOINTMENT *of* FREEHOLDS *under a* GENERAL POWER *in a* WILL, *subject to the* ESTATES *for* LIFE *of the* APPOINTOR, *and his* WIFE (*a*).

Recital of will

TO ALL TO WHOM THESE PRESENTS SHALL COME [*appointor*], of, &c., sends greeting. WHEREAS under or by virtue of the

(*a*) This appointment being made under a general power, and, therefore, operating as a disposition *inter vivos*, will require to be stamped

will of [*testator*], of, &c., deceased, dated the —— day of ——, and proved on the —— day of ——, in the Principal Probate Registry of the High Court of Justice, divers estates and hereditaments situate at ——, stand limited to the use of the said [*appointor*] and of [*wife*], his wife, successively during their respective lives, with remainder to such uses as the said [*appointor*] shall by deed or will appoint, with remainders over as in the said will is mentioned.

creating the power (*b*).

NOW THESE PRESENTS WITNESS, that the said [*appointor*], in exercise of the power reserved to him by the said will, and of all other powers enabling him in this behalf, hereby appoints that ALL THAT messuage, &c., situate, &c., being part of the hereditaments by the said will made subject to the appointment of the said [*appointor*], with their appurtenances, shall henceforth go, remain, and be TO THE USE of the said [*appointee*], his heirs and assigns; Subject nevertheless, and without prejudice to the several estates for life of the said [*appointor*] and [*wife*], his wife, in the estates and hereditaments hereby appointed.

Appointment in pursuance of a power.

Parcels.

To the use of appointee in fee (*c*).

IN WITNESS, &c.

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in accordance with sect. 74 of the Finance (1909-10) Act, 1910, with an *ad valorem* stamp as on a sale: see Preliminary Note, *ante*, p. 51. Notice of this deed should be given to the trustees of the will if the legal estate is in them. As to increment value duty on the death of the appointor, see Finance (1909-10) Act, 1910, ss. 1 (6), 59.

(*b*) Where a deed of appointment conveys an estate in fee or any lesser estate in land, or otherwise affects the title to land, the instrument creating the power, and other subsequent circumstances affecting the property, should be recited, so as hereafter to render the appointment capable of being conveniently made a root of title. In other cases appointments may sometimes be made by indorsement or by supplemental deed.

Recitals.

(*c*) An appointment is merely a right to limit a use. The appointment must, therefore, be made to the use of the person intended to take directly, and without the interposition of a grantee to uses, otherwise the grantee will take the first use under the original estate, and thus the legal estate will vest in him. If the legal estate is in trustees the recital of the will will be varied accordingly, and the appointor will appoint that the hereditaments "shall henceforth be held IN TRUST for the said [*appointee*], his heirs and assigns."

Appointment a limitation of a use.

II. JOINTURE UNDER POWER.

II. POST-NUPTIAL APPOINTMENT *of a* JOINTURE *under a* POWER *contained in a* STRICT SETTLEMENT (*with* VARIATIONS *for* ANTE-NUPTIAL APPOINTMENT) (*d*).

THIS INDENTURE (*dd*), made the —— day of ——, 19—, BETWEEN [*appointor*], of, &c. (hereinafter called "the appointor"), of the one part, and [*wife or intended wife*], of, &c. (hereinafter called "the jointress"), of the other part.

Recitals of settlement creating power.

WHEREAS under and by virtue of an indenture of settlement, dated the —— day of ——, and made between [*parties*], it was provided that the appointor, either before or after he should become entitled to the receipt of the rents and profits of the same premises, but subject and without prejudice to the uses and estates prior to, and powers overreaching the estate of the appointor, and to the uses and estates limited or created in exercise of such powers at any time, either before or after his marriage with any woman, might, by deed revocable or irrevocable, or by will or codicil, appoint to such woman, in the event of her surviving him, for her life or any less period, a rentcharge or rentcharges by way of jointure not exceeding, during the life of [*appointor's father*], the sum of £——, and after his death the annual sum of £—— [either subject to or free from death duties], and to be charged upon all or any of the hereditaments thereby settled, and to be payable without any deduction [except for duty] at such times and in such manner as the said appointor should direct.

Death of appointor's father.

AND WHEREAS the said [*appointor's father*] died on the —— day of ——.

Marriage of appointor and appointee (*e*).

AND WHEREAS on the —— day of —— a marriage was duly solemnized between the appointor and the jointress, his present wife, then [*maiden name*], spinster.

Desire to appoint.

AND WHEREAS the appointor is desirous of making such pro-

(*d*) See also Vol. II., "Settlements," Precedent XXIV., p. 463.

(*dd*) Stamp, 10*s.*; but see Preliminary Note, *ante*, p. 50.

(*e*) In the case of an ante-nuptial appointment this and the next recital should be omitted and in lieu thereof the following recital should be inserted:—

"WHEREAS a marriage is intended shortly to be solemnized between the appointor and the jointress, and upon the treaty for the said intended marriage it was agreed that the appointor should make such appointment as is hereinafter contained."

vision by way of jointure for his said wife in the event of her surviving him as is hereinafter contained:—

Appointment.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement [and in consideration of the said intended marriage], the appointor, in exercise of the power reserved to him by the said recited indenture, and of every other power in anywise enabling him in this behalf, hereby grants and appoints unto the jointress during her life [*or*, during widowhood] in case [the said intended marriage shall be solemnized and] she shall survive him, the annual sum or yearly rentcharge of £——, to be issuing out of, and charged upon ALL AND SINGULAR the manors and hereditaments comprised in the said recited indenture (*f*), such rentcharge to be for the jointure of the jointress, and in bar of all dower and freebench, and to be paid to her by equal half-yearly payments on the —— day of —— and the —— day of —— in every year [during her widowhood], without any deduction (*ff*); the first half-yearly payment thereof to be made on such of the said days as shall first happen after the decease of the appointor.

PROVIDED ALWAYS (*g*), that nothing herein contained shall prevent the appointor from granting or appointing any further rentcharge or rentcharges under the power of jointuring for that purpose reserved by the said recited indenture or any such other power as aforesaid.

IN WITNESS, &c. (*gg*).

(*f*) *Or* (if not charged on all the settled estate),

"all and singular the messuages, farms, lands, and hereditaments, situate, &c., ——, and known as, &c., ——, being part of the manors and hereditaments comprised in the said recited indenture."

(*ff*) As to these words, see *Re Parker-Jervis*, [1898] 2 Ch. 643. As to whether the jointure can be granted free from death duties depends on the terms of the power.

(*g*) Whenever the husband does not exercise his power to the full extent it is prudent to add a similar proviso to the above.

(*gg*) The statutory remedies for recovering rentcharges given by the C. A. 1881, s. 44, will apply to the jointure rentcharge whether the settlement was before or after the Act. See also C. A. 1911, s. 6.

III. OF PORTION, &c.

III. APPOINTMENT *by a* FATHER *of a* PORTION *secured by a* TERM *to a* DAUGHTER *on her* MARRIAGE, *under a* POWER *contained in a* STRICT SETTLEMENT *of the* FAMILY ESTATES (*by* SUPPLEMENTAL DEED) (*h*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], of ——, in the county of ——, esquire (hereinafter called "the appointor"), sends greeting. WHEREAS this deed is intended to be supplemental to an indenture of settlement, dated, &c., and expressed to be made between, &c. [*parties*] (hereinafter called "the principal indenture"). AND WHEREAS there have been issue (other than an eldest son) of the appointor by [*wife*], his wife, three sons and two daughters, that is to say, A. F., who attained the age of twenty-one years, and is since deceased, B. F., who died an infant, C. F. [*former appointee*], who has attained the age of twenty-one years, and is now the wife of M. N., D. F. [*present appointee*], who has attained the age of twenty-one years, and E. F., now an infant of the age of —— years, or thereabouts: AND WHEREAS by a deed poll under the hand and seal of the appointor, dated, &c., and made supplemental to the said indenture of settlement, the appointor, in pursuance of the power reserved to him by the same indenture, appointed the sum of £——, part of the sum of £——, thereby authorised to be raised for the portions of his daughters and younger sons (if three or more), as therein is mentioned, unto the said [*former appointee, married name*], then [*maiden name*], as her portion, in case her then intended marriage with the said [*her husband*] should take effect: AND directed the same to be raised and paid immediately upon the solemnization thereof, which shortly afterwards took place, and the said sum of £—— was accordingly afterwards raised by a mortgage of part of the estates comprised in the said settlement, and paid by the direction of the said [*former appointee*] and [*her husband*], to [*trustee*] and [*trustee*] as the trustees of her marriage settlement: AND WHEREAS a marriage is intended to be shortly solemnized between the said [*appointee*] and [*intended husband*], of, &c.: AND WHEREAS the appointor is desirous of appointing the sum of £—— further part of the said sum of £—— so authorised to be

Recitals of state of family;

of previous appointment of a portion;

intended marriage of appointee.

(*h*) Stamp, 10*s.*: see Preliminary Note, *ante*, p. 51. Notice of this deed must be given to the trustees of the settlement.

III. OF PORTION, &C.

raised as aforesaid, unto the said [*present appointee*], to be paid immediately upon the solemnization of the said intended marriage in manner hereinafter appearing. NOW THESE PRESENTS WITNESS that in consideration of the said intended marriage, and in exercise of the power reserved to him by the said indenture of settlement, and of all other powers (if any) enabling him in that behalf, He, the appointor, hereby appoints the sum of £——, further part of the said sum of £——, by the same indenture of settlement authorised to be raised for the portions of his daughters and younger sons as aforesaid, unto the said [*appointee*], as and for her marriage portion or fortune, in case the said intended marriage shall take place; AND the appointor hereby authorises and directs [*trustee*], the surviving trustee of the term of two hundred years, created by the said indenture of settlement, forthwith, or as soon as may be after the solemnization of the said intended marriage, to raise the said sum of £—— hereby appointed, by a mortgage of a competent part of the estates comprised in the said indenture of settlement, and to pay the same to the person or persons who shall be entitled thereto, by virtue of the appointment hereby made. PROVIDED ALWAYS, and the appointor declares that the appointment hereby made is not intended by him to prevent him from hereafter appointing any part or share of the residue of the said sum of £—— to her the said [*appointee*], in case he should think proper so to do, or to prevent her from hereafter having or taking under and by virtue of the trusts of the said settlement (*i*) any part or share of the residue of the said sum of £——, in case he the appointor should not hereafter make any appointment of or concerning the same, or from having or taking (*k*) any part or share of so much of the said residue as shall or may ultimately remain

Testatum.

Appointment of the portion, in case the marriage should take effect.

Authority to the surviving trustee of the term to raise the portion by mortgage forthwith.

Proviso, that appointment is not to prevent a further appointment to appointee, &c.

LARGER APPOINTMENT THAN A DISTRIBUTIVE SHARE, WHERE THERE IS AN INFANT.

(*i*) If the sum appointed be larger than the appointee's distributive share would have been, in case there had been no appointment, say 1,200*l.*, there being, for instance, 3,000*l.* and three objects, one of them not having gained a vested interest in her share in default of appointment; then, provided it be the intention of the appointor, add,

"in the event of the death of her sister, the aforesaid [*infant*], without having acquired a vested interest therein, any part," &c., *ut supra,*

and make the variations contained in notes (*k*), (*l*) and (*m*), *infra.*

(*k*) "in the same event, any part," &c., *ut supra.*

III. OF PORTION, &c.

Hotchpot clause.

unappointed by him the appointor: Save only and except that the said [*appointee*] shall not in (*l*) any event hereafter, unless by the appointment of the appointor, have or take any further or greater part of the said residue of the said sum of £—— than will, with the said sum of £—— hereby appointed to her as aforesaid, make up what would (*m*) have been the full part or share of her the said [*appointee*] under or by virtue of the trusts of the said settlement of and in the said sum of £——, in case he the appointor had not made any appointment whatsoever of or concerning the same or any part thereof (*n*). PROVIDED ALWAYS, that the appointment hereby expressed to be made shall be void if the said intended marriage shall not take place within twelve calendar months from the date of these presents (*nn*).

Proviso.

IN WITNESS, &c.

IV. POST-NUPTIAL APPOINTMENT *by a* MARRIED WOMAN *of a* LIFE INTEREST *in* PERSONALTY *to her* HUSBAND *under a* POWER *in a* WILL. VARIATIONS *where a* DETERMINABLE LIFE INTEREST *is given, and where the* APPOINTMENT *is* REVOCABLE *and for an* ANTE-NUPTIAL APPOINTMENT (*o*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*appointor*], the wife of [*husband*], of, &c., sends greeting.

(*l*) "such event, except by," *ut supra*.

(*m*) "in the same event have been," &c., *ut supra*.

Larger appointment than distributive share.

(*n*) The hotchpot clause will not be necessary if a similar clause is contained in the instrument creating the power. If the appointment be larger than the distributive share in default of appointment and there is an infant, provided it be the intention, add,

"But in the event of the said [*infant*] living to acquire a vested interest in the said residue of the said sum of £——, subject to the appointor's power of appointment, the said [*appointee*] is not to have or take any part or share of the said residue, in case the appointor should not make any appointment of or concerning the same, or to have or take any part or share of so much of the said residue as shall or may ultimately remain unappointed by him."

(*nn*) This proviso is necessary in order to avoid infringing the rule against perpetuities.

(*o*) Stamp, 10*s*.: see Preliminary Note, *ante*, p. 51.

Recitals: Will containing power of appointment.

WHEREAS [*testator*], late of ——, deceased, by his will, dated, &c., and duly proved in the Principal Probate Registry on the —— day of ——, by all the executors named therein, after making certain specific and pecuniary bequests, devised and bequeathed the residue of his real and personal estate to trustees upon trust for sale and conversion as therein mentioned, and after payment of the testator's funeral and testamentary expenses, debts and legacies, to invest the net residue of the proceeds of such sale and conversion as therein mentioned: AND upon further trust to pay the income of the testator's residuary estate and the investments representing the same (hereinafter called "the said trust estate") to the said [*appointor*] during her life, and after her death to hold as well the capital as the income of the said trust estate upon the trusts therein mentioned, power being reserved thereby to the said [*appointor*], by deed or will, to appoint from and after her decease the whole or such part as she should think fit of the annual income of the said trust estate for the benefit of any husband she might leave her surviving during his life or for any less period and subject to any restrictions she might think proper.

[For post-nuptial appointment only.]

AND WHEREAS the said [*appointor*] is desirous of exercising the power by the said will reserved to her, as aforesaid, in manner (and subject as) hereinafter expressed.

Desire to appoint.

[AND WHEREAS a marriage is intended shortly to be solemnized between the said [*appointor*] and [*husband*], and upon the treaty for the said intended marriage it was agreed that the said [*appointor*] should make such appointment as is hereinafter contained.]

[For ante-nuptial appointment only.]

Intended marriage and agreement to appoint.

NOW THESE PRESENTS WITNESS that [in consideration of the said intended marriage and] in exercise of the power for this purpose given to her by the said will, as aforesaid, and of every other power enabling her in this behalf, the said [*appointor*] doth hereby appoint that [if the said intended marriage shall be solemnized within —— months from the date hereof, then] from and after her death, if the said [*husband*] shall survive her, the whole of the income of the said trust estate shall be paid to the said [*husband*], or his assigns, during his life [*or*, "to the said [*husband*] during his life, until some act or event shall be done or happen whereby the said income, or any part thereof, would, if absolutely belonging to him, become vested in or payable to or

Appointment to husband for life

determinable on bankruptcy or alienation (*p*).

(*p*) See note (*p*), next page.

IV. BY MARRIED WOMAN, &c.

charged in favour of some other person or persons or a corporation] (*p*).

Power of revocation.

[PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for the said [*wife*] at any time hereafter by deed, wholly or partially, to revoke the appointment hereinbefore contained].

IN WITNESS, &c. (*q*).

V. APPOINTMENT *by* COMMITTEE *of a* LUNATIC *to a* DAUGHTER *of* LUNATIC *on her* MARRIAGE *of a* SHARE *of* TRUST FUNDS *under a* POWER *vested in* LUNATIC under *a* WILL. VARIATION *where the* LUNATIC *is not so found by* INQUISITION (*r*) (*s*) (*t*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, [*committee*], of, &c., committee of the estate of [*lunatic*], of, &c., a lunatic [*or, if not so found by inquisition,* "[*lunatic*], of, &c., a person of unsound mind not so found by inquisition, acting by A., of, &c., as the person appointed to exercise the powers of a committee of his estate"], sends greeting.

Recitals: of will creating the power;

WHEREAS [*testator*], of, &c., deceased, duly made and executed his will, and thereby, after bequeathing certain specific and pecuniary legacies therein mentioned, gave and bequeathed the residue of his personal estate to [*trustees*] in trust for the said [*lunatic*] during his life, and from and after his decease in trust for the child or children of the said [*lunatic*] as he should by deed or will appoint, and in default of such appointment upon the trusts therein mentioned or referred to, and the said [*testator*] by his said will appointed the said [*trustees*] the executors thereof.

(*p*) The wife cannot give her husband a protected life interest coupled with a discretionary trust for the application of the income on alienation unless she is specially authorised by the power so to do.

(*q*) Notice of this deed should be given to the trustees of the will.

(*r*) Stamp, 10*s*.: see Preliminary Note, *ante*, p. 51.

(*s*) A special power of appointment among children may be exercised on behalf of a lunatic donee of the power whether so found or not (*Re A.*, [1904] 2 Ch. 328), by a person appointed under the Lunacy Act, 1890, s. 116, with the authority of a judge (sect. 128) or Master (under the Lunacy Act, 1908, s. 1). As to a person detained under the Mental Deficiency Act, 1913, see sects. 2, 11, and 67 of that Act; and see *Re Whalley*, [1906] 1 Ch. 565.

(*t*) This precedent can easily be adapted for the case of a donee exercising the power personally by deleting all references to the lunacy and proceedings with regard thereto.

V. BY COMMITTEE OF LUNATIC, &c.

AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, and his said will was duly proved on the —— day of ——, 19—, by the said executors in the Principal Probate Registry. — of death of testator; of probate of his will;

AND WHEREAS the residuary personal estate of the said [*testator*] is now represented by the several stocks, funds, and securities specified in the schedule hereto.

AND WHEREAS there have been four children of the said [*lunatic*], all of whom are now living, but one only, namely, [*appointee*] has attained the age of twenty-one years. — of state of family;

AND WHEREAS by an Order in Lunacy, dated, &c., in the matter of, &c., upon an application before Mr. Justice ——, the said [*committee*] was appointed to be the committee of the estate of the said [*lunatic*] [the said A. was appointed to exercise the powers of a committee of the estate of the said [*lunatic*], a person of unsound mind not so found by inquisition]. — of order appointing committee;

AND WHEREAS by an Order of Mr. Justice ——, made on the —— day of ——, upon an application in the said matter, it was ordered that the said [*committee*], as committee of the estate of the said [*lunatic*] [the said A., as the person so appointed as aforesaid], should exercise the power of appointment given to the said [*lunatic*] by the said will in manner hereinafter appearing. — of order directing appointment.

AND WHEREAS Master ——, one of the Masters in Lunacy, has settled and approved of these presents as a proper appointment pursuant to the said last-mentioned Order, and in testimony of such approval the seal of the said Master has been affixed in the margin hereof. — Master's approval;

AND WHEREAS a marriage is intended shortly to be solemnized between the said [*appointee*] and [*intended husband*]. — of intended marriage of appointee.

NOW THESE PRESENTS WITNESS as follows:—

1. In pursuance of such last-mentioned Order, and in exercise of the power in that behalf given by the said will, and of every other power enabling him in this behalf, he the said [*committee*], acting on behalf of the said [*lunatic*] [*or, if the lunatic is not so found by inquisition,* "he the said [*lunatic*], acting by the said A., as aforesaid"], hereby appoints that one equal fourth part or share of and in the said stocks, funds, shares, and securities specified in the said schedule, and of and in all other, if any, the residuary personal estate of the said [*testator*], and of and in the stocks, funds, shares, or securities, for the time being represent- — Appointment of share.

V. BY COMMITTEE OF LUNATIC, &c.

ing such fourth part or share, shall from and after the death of the said [*lunatic*] remain and be held in trust for the said [*appointee*].

Proviso.

2. PROVIDED ALWAYS that the appointment hereby expressed to be made shall be void if the said intended marriage shall not take place within twelve calendar months from the date of these presents.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

VI. APPOINTMENT *by a Father and Mother of* STOCK *amongst their* CHILDREN EQUALLY, *excluding Eldest Son, subject to their own Life Interests therein; with* PROVISOES *as to Survivorship with regard to Shares appointed to two Infant Daughters; with* POWER *of* REVOCATION (*u*). (*By Indorsement.*)

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within named [*father*] and [*mother*], in the within written indenture called [*mother's maiden name*] (hereinafter called "the appointors"), send greeting. WHEREAS shortly after the date of the within written indenture, the then intended marriage between the appointors was duly solemnized.

Recital of appointor's marriage;

AND WHEREAS the trust funds now subject to the trusts of the said indenture of settlement are represented by the sum of £——, $2\frac{1}{2}$ per cent. Consolidated Stock (*x*), standing in the names of [*trustees*] the present trustees of the same indenture.

of state of trust fund;

AND WHEREAS there is issue of the said marriage, now living, two sons, namely, A. B. and C. B., and five daughters, namely, E. Y., the wife of, &c., F. B., G. B., H. B., and I. B.; and all the said children, except the said H. B. and I. B., have attained the age of twenty-one years.

of state of family;

(*u*) Stamp, 10*s.*: see Preliminary Note, *ante*, p. 51.

(*x*) This is the proper designation of the stock created by the conversion of the old 3 per cents. under the National Debt Conversion Act, 1888, s. 2. As to making consols and other stocks transferable by deed, see Finance Act, 1911, s. 17, and the regulations thereunder, (1912) W. N. part 2, p. 115.

VI. BY FATHER AND MOTHER OF STOCK AMONG CHILDREN,&C.

AND WHEREAS the said A. B., the eldest son of the appointors, being otherwise sufficiently provided for, the appointors are desirous that the whole of the trust funds which now are or may hereafter be subject to the trusts of the said indenture of settlement shall be secured to their children, exclusive of the said A. B., in such manner and subject as hereinafter appears.

NOW THESE PRESENTS WITNESS as follows:—

Appointment after death of father and mother, in trust for children other than A. B. equally.

1. In exercise of the power to them for this purpose reserved by the within written indenture of settlement, and of all other powers enabling them in this behalf, they the appointors hereby jointly appoint, that from and immediately after the decease of the survivor of them, the appointors, the said trust funds, and the income thereof, shall remain and be IN TRUST for the said C. B., E. Y., F. B., G. B., H. B., and I. B. respectively, in equal shares.

Proviso for accruer if either of the two infant daughters should die under 21, without having been married.

2. PROVIDED ALWAYS that if either of them the said H. B. and I. B. shall die under the age of twenty-one years, without having been married, then the share of her so dying, of and in the said trust funds shall go and remain to the said C. B., E. Y., F. B. and G. B., and the survivor of them, the said H. B. and I. B., in equal shares.

Proviso for accruer if both infant daughters should die under 21, without having been married.

3. PROVIDED FURTHER NEVERTHELESS, that if both of them the said H. B. and I. B. shall die under the age of twenty-one years, without having been married, then and in such case, as well the original share of the survivor of them, so dying, as the share which by virtue of the last-mentioned clause shall have survived or accrued to the survivor of them, of and in the said trust funds shall go and remain to the said C. B., E. Y., F. B., and G. B., in equal shares.

Advancement and maintenance clauses, &c., in settlement to apply to appointed shares.

4. The appointors further declare that all the powers and provisions in the within written indenture contained for the advancement of children (whether in the lifetime or after the death of the appointors), and maintenance and education of minor children, and the accumulation and application of surplus income of the shares of minors shall be applicable to the shares hereinbefore appointed in the same manner as if the same or the like powers and provisions had been herein inserted, or as near thereto as may be.

Power of revocation.

5. PROVIDED ALSO that it shall be lawful for the appointors at any time or times during their joint lives, by any deed or deeds,

VI. BY FATHER AND MOTHER OF STOCK AMONG CHILDREN, &c.

or for the survivor of them, at any time or times during his or her life in like manner or by will or codicil to revoke all or any of the trusts and provisions hereinbefore declared and contained, of and concerning the said trust funds, and the income thereof, or any part thereof respectively, and to appoint and declare any new or other trusts or provisions concerning the same respectively.

IN WITNESS, &c.

VII. REVOCATION *of Appointment (see the last Precedent), and* NEW APPOINTMENT *(by Endorsement upon the revoked Appointment)* (*y*).

Recitals.

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within named [*father*] sends greeting. WHEREAS the above-named [*mother*] died on the —— day of ——, 19—. AND WHEREAS the above-named H. B. died on the —— day of ——, 19—, an infant and unmarried. AND WHEREAS the said I. B. attained the age of twenty-one years on the —— day of ——, 19—.

AND WHEREAS on the —— day of ——, 19—, the above-named F. B. [*second daughter*], married [*husband*], of, &c., and is now otherwise sufficiently provided for by virtue of an indenture of settlement made prior to her marriage by her said husband.

Revocation (*a*).

NOW THESE PRESENTS WITNESS, that the said [*father*], in exercise of the power reserved to him by the above-written deed (*z*), and of every other power in this behalf him enabling, hereby revokes the appointment made by the above-written deed and the trusts therein declared and contained.

New appointment.

AND ALSO in exercise of the power reserved to him by the within written indenture, and of every other power in this behalf him enabling, appoints that the above-mentioned trust funds, and the income thereof, shall, from and immediately after the decease of the said [*father*], remain and be in trust for the above-named

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(*y*) This deed requires two 10*s.* stamps for the revocation and the appointment respectively. Notice of this deed should be given to the trustees.

(*z*) As to election by appointees, where the appointor not having reserved a power of revocation, purports to make a new appointment, see *Pickersgill* v. *Rodger*, 5 Ch. D. 163.

(*a*) As to the importance of exercising the power of revocation, see Preliminary Note, *ante*, p. 52.

C. B., E. Y., G. B., and I. B. in equal shares. PROVIDED ALWAYS, that it shall be lawful for the said [*father*] at any time or times hereafter by any deed or deeds revocable or irrevocable or by will or codicil, to revoke all or any of the trusts and provisions hereinbefore contained of and concerning the trust funds, and the income thereof, or any part thereof respectively, and to appoint and declare any new or other trusts or provisions concerning the same respectively (*aa*). VII. REVOCATION AND NEW APPOINTMENT. Power of revocation.

IN WITNESS, &c.

VIII. DEED POLL *making a previous revocable* APPOINTMENT *under a* SPECIAL POWER *absolute by a* RELEASE *of the* POWER *of* REVOCATION (*Endorsed on the Settlement or on the last Appointment if made by separate Instrument*) (*b*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within-named [*father*], by virtue of every or any power enabling him in this behalf, whether under the within written [*or*, mentioned] indenture of settlement, the above [*or*, within] written deed poll of revocation and new appointment or otherwise, doth hereby absolutely release and give up the power of revocation in the said last mentioned deed poll contained to the intent that the appointment therein contained in favour of the within named C. B., E. Y., G. B., and I. B., shall, subject to the life interest of the within named [*father*], in the income of the within mentioned trust funds, become and be henceforth absolute and indefeasible (*c*). Release.

IN WITNESS, &c.

IX. APPOINTMENT *of* GUARDIAN *by a Father*.

KNOW ALL MEN BY THESE PRESENTS that I [*father*], of, &c., hereby appoint [A. B.], of, &c., to be the guardian of my Appointment.

(*aa*) If desired the power of advancement under the settlement may be applied to the appointed shares as in clause 4 of Prec. VI., p. 63.

(*b*) Stamp, 10*s.*: see Stamp Act, 1891, sched., *tit.* "Release."

(*c*) Notice of this deed should be given to the trustees of the will. This release is made by virtue of sect. 52 of the Conveyancing Act, 1881, and a married woman can release the power by an unacknowledged deed: see *Re Chisholm's Sett.*, [1901] 2 Ch. 82. The fact that the release of a special power will benefit the donee does not make it fraudulent and void: see *Re Somes*, [1896] 1 Ch. 250.

IX. OF GUARDIAN BY FATHER.

children, from and after my decease, until, being sons, they shall respectively attain the age of twenty-one years, or being daughters, they shall respectively attain that age or marry, and I commit to the said [A. B.] the sole custody and tuition of my said children accordingly: PROVIDED ALWAYS, that if the said [A. B.] shall die in my lifetime or before the youngest of my children, being a son, shall attain twenty-one years of age, or being a daughter, shall attain that age or marry, then I hereby appoint [C. D.], of, &c., such guardian of my children as aforesaid, and commit to him the sole custody and tuition of them accordingly.

IN WITNESS, &c. (*d*).

X. PRESENTATION TO A BENEFICE (*e*).

TO THE RIGHT REVEREND FATHER IN GOD [*bishop*], by Divine permission Lord Bishop of ——, or to his Vicar general or spiritual, or to any other person having or that shall have sufficient authority in this behalf:—

Presentation.

I [*patron*], of, &c., the patron of the advowson of the rectory of the parish church of ——, in the county of ——, and diocese of —— aforesaid, DO HEREBY PRESENT to your Lordship, and to the rectory of —— aforesaid, now become vacant by the death [*or*, "resignation," *or as the case may be*] of the Reverend [A. B.], clerk, the last incumbent thereof, and to my presentation in full right belonging, the Reverend [C. D.], clerk, Master of Arts, now of, &c., humbly praying that your Lordship will be graciously pleased to admit and institute him to the said rectory, and to invest him with all its rights, members and appurtenances, and cause him to be inducted into the same, and to do

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(*d*) This appointment must be by deed (see stat. 12 Car. 2, c. 24), and should be attested by two witnesses: but see *Morgan* v. *Hatchell*, 19 Beav. 86. It is by its nature testamentary and revocable by will: *Ex parte Earl of Ilchester*, 7 Ves. at p. 367. Under sect. 8 of the Act an infant father can appoint guardians by deed. The appointment is subject to the mother's rights under the Guardianship of Infants Act, 1886. The stamp will be 10*s*.

(*e*) No stamp is required: see 40 & 41 Vict. c. 13, s. 13.

and execute all other things which shall appertain to your Lordship's episcopal office in this behalf (*f*).

In witness, &c.

XI. APPOINTMENT *of a* Parish Clerk (*g*).

Appointment.

KNOW ALL MEN by these presents, that I, ——, rector [*or*, vicar], of the parish church of ——, in the county of ——, clerk in holy orders, hereby nominate and appoint [A. B.], of, &c., to be parish clerk of the said parish church, in the place of C. D., deceased, to hold and execute the said office by himself [his deputy or deputies] during the term of his life, and to receive and take for his own use all such wages, fines, fees, dues, profits, and emoluments as appertain to the said office and of right ought to belong to the same, in the same manner in every way as the said C. D.] or any former clerk of the parish church had or should have had as due and of right accustomed.

In witness, &c.

XII. APPOINTMENT *of a* Gamekeeper *by a* Lord *of a* Manor (*including* Power *to* Kill Game *and to seize* Engines, *&c., and* Fishing Nets) (*h*) (*i*).

KNOW ALL MEN by these presents, that I, A., of, &c., lord [*or*, lady] of the manor of ——, in the county of ——, do hereby, by virtue of the statute in that behalf, appoint and depute [*gamekeeper*], of, &c., to be a gamekeeper of and in the said

(*f*) See Benefices Act, 1898 (61 & 62 Vict. c. 48), as to grounds for refusal by a bishop to institute.

(*g*) A parish clerk must be appointed, and cannot be removed except for misconduct: see *Rex* v. *St. Anne's, Soho*, 3 Burr. 1877. It may, therefore, be advisable in some cases for a rector to appoint a friend as parish clerk, and for the latter to appoint a deputy, who can be removed at any time, to perform the duties of the office. Stamp, 10*s*.

(*h*) Stamp, 10*s*.: see Stamp Act, 1891 (54 & 55 Vict. c. 39), sched. *tit.* "Deputation."

(*i*) As to the appointment of gamekeepers by lords of the manor, see 1 & 2 Will. 4, c. 32, ss. 13, 14, 16. The appointment must be "under hand and seal": see sect. 13. As to Wales, see sect. 15. By sect. 16, the appointment must be registered with the clerk of the peace for the county or place within which the manor is situate. By sect. 36, persons entitled to game or occupying the lands, or their gamekeepers or

XII. OF GAMEKEEPER.

manor during my pleasure, with full power, licence, and authority within and upon the said manor to preserve [and kill] the game for my sole use and benefit [*or*, "for his own use or for the use of any other person or persons whatsoever"], and also within the same limits, so far as the law allows, to take and seize for my use all such dogs, nets, and other engines and instruments for the taking or killing of game as within the precincts of my said manor shall be used by any person not holding a game licence or not authorised by me to kill game. [AND I hereby authorise the said [*gamekeeper*] to demand, seize, take, and keep for my own use, all rods, lines, hooks, nets, and other instruments for taking or destroying fish which he shall find used or laid, or in the possession of any person or persons whomsoever, fishing in any river or fishery whatsoever within my said manor without my consent.]

AND FURTHER, I authorise the said [*gamekeeper*] to do and execute all acts and things which may be requisite for the preservation of the game within the said manor and for the discovery of offenders therein, according to the laws of this realm, and for which this shall be his sufficient warrant.

Given under my hand and seal this —— day of ——.

Signed, sealed, and delivered
in the presence of ——.

APPOINTMENTS OF NEW TRUSTEES.

PRELIMINARY NOTE.

Stamps.

UNDER the Stamp Act, 1891, s. 4, except where express provision to the contrary is made by that or any other Act, instruments relating to distinct matters are to be separately charged with duty in respect of each of the matters. (See *Hadgett* v. *I. R. Commrs.*, 3 Exch. D. 46.)

The stamp fixed by the schedule of the Stamp Act, 1891, for "appointment of a new trustee" is 10*s*. Sect. 62 of the Act

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servants, are authorised to take game from trespassers, and by sect. 2 the word "game" is declared for the purposes of that Act to include "hares, pheasants, partridges, grouse, heath or moor game, black game and bustards."

provides that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with a higher duty than 10*s.*, and this provision is, by the Finance Act, 1902, s. 9, extended to the retirement of a trustee without a new trustee being appointed. (See, too, Stamp Act, 1891, s. 78, and Finance (1909-10) Act, 1910, s. 74 (6).) But having regard to sect. 74 (2) of the last mentioned Act, wherever the deed of appointment operates as a conveyance or transfer of trust property the stamp must be adjudicated.

Statutory powers of appointment.

Appointments of new trustees can now be made under sect. 10 of the Trustee Act, 1893 (which replaces sect. 31 of the Conveyancing Act, 1881, sect. 5 of the Conveyancing Act, 1882, and sect. 6 of the Conveyancing Act, 1892), where a trustee (1) is dead, (2) remains out of the kingdom for more than twelve months (*Re Walker*, [1901] 1 Ch. 259), (3) desires to be discharged, (4) refuses or is unfit to act, or (5) is incapable of acting.

Donees of the statutory power cannot appoint themselves. (*Re Sampson*, [1906] 1 Ch. 435.)

A trustee who disclaims is one who "refuses to act." (See *D'Adhemar* v. *Bertrand*, 35 Beav. 19.) A bankrupt trustee is "unfit to act." (*Re Roche*, 2 Dru. & War. 287; *Re Barker*, 1 Ch. D. 43; *Re Adams*, 12 Ch. D. 634; *Re Hopkins*, 19 Ch. D. 61, 63.) A lunatic trustee is "incapable of acting." (*Re East*, 8 Ch. 735; *Re Blake*, W. N. (1887) 173; *Re Cutler*, 39 Sol. J. 484.) As to bodily and mental infirmity not amounting to lunacy, see *Re Lemann*, 22 Ch. D. 633; *Re Barber*, 39 Ch. D. 187. The statutory power does not apply to incapacity or unfitness by reason of infancy. (*Re Tallatire*, W. N. (1885) 91; *Re Skelmerdine*, 33 L. T. 474.)

Whenever there is a difficulty in proving or preserving evidence of "incapacity or unfitness," *e.g.*, where it arises from mental or physical infirmity, the appointment should be made by the Court under sect. 25 of the Trustee Act, 1893.

Other provisions of the T. A. 1893: Increasing the number of trustees. Separate trustees.

By the Trustee Act, 1893, s. 10, provision is also made (sub-sect. (2)) for (a) increasing the number of trustees, (b) appointing separate trustees of the several parts of trust property held on different trusts, and (c) rendering it unnecessary to appoint more than one trustee where one only was originally appointed, or to fill up the number where more than two originally appointed, (d) vesting the trust property in the new trustees.

Retirement when more than two trustees.

By sect. 11, where there are more than two trustees, one of them may retire with the consent of his co-trustees and any person empowered to appoint trustees, on declaring by deed his desire to be discharged. Where the Public Trustee is a trustee with one other trustee the latter may retire under sect. 5 (2) of the Public Trustee Act, 1906.

Vesting declaration.

Sect. 12 of the Trustee Act, 1893, provides for vesting certain trust property in the new trustees by a declaration to be made by the appointor. This vesting declaration applies to "any estate or interest in land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action," and is to be to the effect that such estate or interest, &c. shall vest "in the persons who by virtue of the deed become and are trustees for the performance of the trust." This includes the continuing as well as the new trustees. As to the application of this section to mortgages by sub-demise for the purpose of getting in the original term, see *London and County Bank* v. *Goddard*, [1897] 1 Ch. 642. Sub-sect. (2) of sect. 12 of the Trustee Act, 1893, extends the operation of the vesting declaration to the case of a retiring trustee, and sub-sect. (3) excludes from the section any legal estate or interest in copyhold or customary land, mortgage securities, and any share, stock, annuity, or property "only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament."

Extended to deed of retirement.

Public trustee.

A custodian trustee is not a trustee for the purpose of determining the number of trustees (see Public Trustee Act, 1906, s. 4 (2) (g)), and although two or more trustees were originally appointed, the Public Trustee may be appointed sole trustee (*a*). (See generally as to the appointment of the Public Trustee as trustee or custodian trustee, the Public Trustee Act, 1906, and the notes to Precedent XIV., *post*, pp. 98, 99.)

Corporation as trustee.

As to appointing a corporation as trustee jointly with an individual, see Bodies Corporate (Joint Tenancy) Act, 1899; *Re Thompson*, [1905] 1 Ch. 229.

Registered land.

In the case of land registered under the Land Transfer Acts, the form of appointment will be the same as where the land is not registered; but the proper alterations must be made in the register. If the trustees are the registered proprietors, the transfer may

(*a*) See *Re Leslie*, [1911] 1 Ch. 611.

be made by a registered transfer, but the vesting declaration should be inserted in the appointment to enable the registrar to make the proper entry on the register, L. T. R. 151, in case of undue delay or expense in obtaining the execution of the transfer by a trustee registered as proprietor. If the tenant for life is the registered proprietor, no transfer or vesting declaration is necessary.

Judicial trustees.

As to the appointment by the Court of judicial trustees, see the Judicial Trustee Act, 1896; and see also *Re Ratcliff*, [1898] 2 Ch. 352; *Douglas* v. *Bolam*, [1900] 2 Ch. 749. The Court has no power under the Trustee Act, 1893, to appoint an executor or administrator. (See sect. 25, sub-sect. (3).)

See further as to the appointment of new trustees, K. & E., 10th ed., Vol. 1, pp. 114 *et seq.*

PRECEDENTS.

I. APPOINTMENT *by* WRITING *not under* SEAL *or by* DEED POLL *under an* EXPRESS POWER *to appoint by* DEED *or* WRITING, *or under the* STATUTORY POWER, *of a* NEW TRUSTEE *of a* SETTLEMENT *of* MONEY *in the* FUNDS *in place of a* RETIRING TRUSTEE. (*By* INDORSEMENT.) (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*appointor*], formerly the within named [*maiden name*], and now the widow of the within named [*deceased husband*], deceased, send greeting.

Recitals:

WHEREAS the within named [*retiring trustee*] is desirous of being discharged from the trusts of the within written indenture.

of trustee's wish to retire (*b*);

AND WHEREAS I am desirous of appointing [*new trustee*], of ——, to be a trustee of the within written indenture in place of the said [*retiring trustee*].

of desire to appoint new trustee;

AND WHEREAS the property now subject to the trusts of the within written indenture consists of the sum of £——, Two and

of state of

(*a*) Although the statutory power, and in the precedent above the express power by virtue of the instrument creating it, is made exercisable by writing, not under seal, it is better it should be by deed, the stamp being the same. The statutory power is not exercisable by will: *Re Parker*, [1894] 1 Ch. 707. The stamp will be 10*s*.

(*b*) The recitals of the marriage and death of the husband are here omitted for the sake of brevity; these facts are implied by the description of the appointor as widow. The retiring trustee should by a statement in writing, either indorsed on or appended to the settlement, affirm his desire to retire from the trust.

I. NOT UNDER SEAL OR BY DEED POLL, &c.

a Half per Cent. Consolidated Stock, and it is intended that the same shall immediately after the execution of these presents be transferred into the joint names of the said [*continuing trustee*] and [*new trustee*].

trust property (*c*). Donee of power appoints new trustee.

NOW KNOW YE that in exercise of the power given to me by the within written indenture [by the statute in that behalf], and of every other power me hereunto enabling, I hereby appoint the said [*new trustee*] to be a trustee in the place of the said [*retiring trustee*], and to act jointly with the within named [*continuing trustee*] for all the purposes of the within written indenture, or such of the same as are now subsisting and capable of taking effect (*d*).

As WITNESS my hand this —— day of ——, 19—, *or*,

IN WITNESS whereof I have hereunto set my hand and seal this —— day of ——, 19—.

II. APPOINTMENT *of two* NEW TRUSTEES *of* REAL *and* PERSONAL PROPERTY *under the* STATUTORY POWER *in the* PLACE *of a* DECEASED TRUSTEE, *by* PERSONS *nominated by the* SETTLEMENT *for the* PURPOSE. VESTING DECLARATION. (*By* DEED POLL *indorsed.*) (*e*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within named [*husband*] and [*wife*] (hereinafter called "the appointors") send greeting.

Recitals: of marriage:

WHEREAS the marriage of the appointors was duly solemnized shortly after the date of the within written indenture.

of death of trustee:

AND WHEREAS the within named [*deceased trustee*] died on the —— day of ——, 19—.

of state of

AND WHEREAS the property now subject to the trusts of the

(*c*) The trust funds are sometimes transferred before the appointment, but it is not strictly proper to do so.

(*d*) Where the donee of the power is a lunatic, whether so found or not, the power may be exercised by his committee by order of a judge or Master in Lunacy: see sects. 128, 129, and 135 of the Lunacy Act, 1890, and sect. 27 (1) of the Lunacy Act, 1891; *Re Shortridge*, [1895] 1 Ch. 278; *Re Fuller*, [1900] 2 Ch. 551. If a vesting order is required application must be made to the High Court, to whom the powers of making vesting orders under sects. 135—143 of the Lunacy Act, 1890, are transferred by the Lunacy Act, 1911, s. 1.

(*e*) This deed will require two 10*s*. stamps, one for the appointment and the other for the vesting declaration: see *Hadgett* v. *I. R. Commrs.*, 3 Ex. D. 46. As to stamps on appointment of new trustees, see Preliminary Note, *ante*, p. 68. The Trustee Act, 1893, s. 10, sub-s. (2) (a), gives power to increase the number of trustees on an appointment.

within written indenture consists of the several messuages, pieces of land and hereditaments, policies of assurance, securities and things in action, the particulars whereof are specified in the schedule hereto.

trust property;

AND WHEREAS the appointors are desirous of appointing [*new trustee, No.* 1], of, &c., to be a trustee of the within written indenture in the place of the said [*deceased trustee*] deceased; and also to appoint [*new trustee, No.* 2] to be an additional trustee thereof in order that the number of such trustees may be increased (*f*).

of desire to appoint new trustees.

NOW KNOW YE that the appointors in exercise of the power for this purpose by the joint operation of the within written indenture (*g*) and the statute in that behalf given to the appointors, and of every or any other power enabling them in this behalf, hereby appoint the said [*new trustee, No.* 1] to be trustee in the place of the said [*deceased trustee*] deceased, and the said [*new trustee, No.* 2] to be an additional trustee, and to act jointly with the within named [*surviving trustee*] for the purposes of the within written indenture: AND the appointors hereby declare that all the said messuages, pieces of land, hereditaments, and premises, and the right to recover all the things in action mentioned in the said schedule hereto respectively, and all other, if any, the property, debts and things in action, now subject to the trusts of the within written indenture, and which are capable of being vested by this declaration, shall forthwith vest in the said [*surviving trustee*] and [*new trustees*] as trustees of the within written indenture, for all the estate and interest now subject to the trusts of the said settlement upon the trusts and subject to the powers and provisions applicable thereto respectively, by virtue of the said settlement or otherwise.

Appointment of new trustees.

Vesting declaration.

IN WITNESS, &c. (*h*).

THE SCHEDULE ABOVE REFERRED TO.

(*f*) In the absence of express authority in the deed or will creating the trust the number of trustees cannot be increased except on an appointment to fill a vacancy: see *Re Gregson*, 34 Ch. D. 209; but the Court has jurisdiction to appoint an additional trustee even where there is no vacancy: *ibid.*

(*g*) The husband and wife are here the persons nominated by the settlement for the purpose of appointing new trustees.

(*h*) Notice of the appointment and vesting declaration must be given to the insurance offices as to the policies, and to debtors and others interested as to the securities, choses in action, &c.

III. OF PERSONALTY.

III. APPOINTMENT *of a* NEW TRUSTEE *of* PERSONALTY *under the* STATUTORY POWER *by* CONTINUING AND RETIRING TRUSTEES, *one* TRUSTEE *having* DIED *and one* RETIRING, *but only* ONE *being* APPOINTED *in the* PLACE *of the* TWO. RECITALS *as to* DEALINGS *with the* TRUST PROPERTY. VESTING DECLARATION. RELEASE *to the* RETIRING TRUSTEE *given by the* BENEFICIARIES *who are* SUI JURIS (*i*). (*By* SUPPLEMENTAL DEED.)

Parties.

THIS INDENTURE (*k*), made the —— day of ——, 19—, BETWEEN [*continuing trustee*] (*l*), of, &c., and [*retiring trustee*], of, &c., of the first part, [*husband*], of, &c., and [*wife*], his wife, of the second part, [*adult beneficiary*], of, &c., [*adult beneficiary*], of, &c., and [*adult beneficiary*], of, &c., of the third part, and [*new trustee*], of, &c., of the fourth part; And supplemental to

Deed expressed to be supplemental.

an indenture, dated, &c., and expressed to be made between [*parties*] (*m*), and hereinafter referred to as the principal indenture, being a settlement made in consideration of the marriage then intended, and which was shortly afterwards solemnized between the said [*husband*] and [*wife*].

WHEREAS the said [*deceased trustee*] died on the —— day of ——

Recitals: of death of deceased trustee;

AND WHEREAS there has been issue of the said marriage, three children and no more, namely, the said [*beneficiaries*], all of whom have attained the age of twenty-one years.

of state of family;

AND WHEREAS since the date of the principal indenture two

of sums raised for advancement;

several sums of £—— and £—— respectively have been raised under the power in that behalf therein contained for the advance-

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(*i*) A retiring trustee cannot insist on a release where the trust estate and accounts are of a simple nature (II. Encyclop. Prec., p. 450), but where a release is given it is usually preferable to make it by a separate deed which the retiring trustee keeps.

(*k*) This deed will require three 10*s*. stamps, one for the appointment, another for the vesting declaration, and the third for the release: the stamps must be adjudicated: see Preliminary Note, *ante*, p. 68.

(*l*) In this precedent it is assumed that no person was nominated by the settlement for the purpose of appointing new trustees. The appointors will, therefore, be the continuing or surviving trustees. It is advisable, but not necessary, that the adult beneficiaries be made parties.

(*m*) The wife will be here described as

"the said [*wife*] by her then name and description of [*wife's maiden name*] spinster, of the —— part."

ment in the life of the said [*adult beneficiary*] and [*adult beneficiary*] [A.] and [B.].

of sales, and dealings with trust property;

And whereas the sales and investments of and other dealings with the trust property, and the receipts and payments in respect thereof, are set out in the form of a debtor and creditor account in the first schedule hereto, from which it appears that there is a balance of £—— standing to the credit of the said [*continuing trustee*] and [*retiring trustee*] in their joint names at the —— bank.

of present state of the trust property;

And whereas the property now subject to the trusts of the principal indenture consists of the said balance of £——, and also of the several stocks, funds, shares, securities, debts, and things in action, the particulars whereof are set out in the second schedule hereto.

of desire of retiring trustee to be discharged; of desire to appoint new trustee;

And whereas the said [*retiring trustee*] is desirous of being discharged from the trusteeship of the principal indenture.

And whereas the said [*continuing trustee*] and the said [*husband*] and [*wife*] are desirous that the said [*new trustee*] shall be appointed as trustee of the principal indenture in the place of the said [*retiring trustee*], but it is not intended at present to supply the place of the said [*deceased trustee*] as a trustee thereof (*n*).

of transfer of stocks, &c. (*o*);

And whereas it is intended that the stocks, funds, shares and mortgage and other securities, the particulars whereof are set out in the first part of the said second schedule hereto, shall forthwith be transferred or assured according to the nature thereof respectively, so as to be effectually vested in the said [*continuing trustee*] and [*new trustee*] as trustees of the principal indenture.

of agreement as to beneficiaries joining (*p*).

And whereas the said [*retiring trustee*] has agreed, at the request of the parties hereto of the second and third parts, to

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(*n*) Unless it is expressly stated that it is not intended at present to fill up the deceased trustee's place it would seem doubtful whether a valid appointment could be made to fill up this vacancy in the future to restore the full number of trustees under the Trustee Act, 1893, s. 10 (2), until a fresh vacancy occurred: *In re Gregson's Trusts*, 34 Ch. D. 209.

(*o*) The transfer of securities, &c. should be made after the appointment of the new trustee, but sometimes it is made previously. For a precedent of a transfer of a mortgage on the appointment of a new trustee, the trust not being disclosed, see *tit.* "Mortgages."

(*p*) The concurrence of the retiring trustee in making the appointment is not necessary since the continuing trustee can by himself make

III. OF PERSONALTY.

concur in making the said appointment upon the said parties hereto of the second and third parts joining herein to testify their approval, and to give him such release as is hereinafter contained, which the said parties hereto of the second and third parts have agreed to do.

NOW THIS INDENTURE WITNESSETH as follows:—

Appointment of new trustee.

1. In exercise of the power for this purpose by the statute in that behalf given to the said [*continuing trustee*] and [*retiring trustee*], and of every or any other power them enabling in this behalf, they the said [*continuing trustee*] and [*retiring trustee*], with the approval hereby testified of the parties hereto of the second and third parts respectively, do hereby appoint the said [*new trustee*] to be a trustee in place of the said [*retiring trustee*], and to act jointly with the said [*continuing trustee*] for the purposes of the principal indenture.

Vesting declaration.

2. In pursuance of the said appointment the said [*continuing trustee*] and [*retiring trustee*], with the consent and approbation of the said [*husband*] and [*wife*] testified as aforesaid, do hereby declare that all the estate and interest now vested in the said [*continuing trustee*] and [*retiring trustee*] of and in the several debts and things in action, the particulars whereof are set forth in the second part of the said second schedule hereto, and of and in all other, if any, the debts and things in action, subject to the trusts of the principal indenture, and the right to recover all or any such debts and things in action respectively, shall forthwith vest in the said [*continuing trustee*] and [*new trustee*], as trustees of the principal indenture, upon the trusts and for the purposes and with and subject to the powers and provisions now applicable thereto under or by virtue of the principal indenture.

Release of retiring trustee.

3. In further pursuance of the said appointment, and in consideration of the premises, the said parties hereto of the second and third parts do respectively hereby, to the extent of their respective interests and abilities, release the said [*retiring trustee*], his heirs, executors, and administrators, from all claims, demands, proceedings, and actions in respect of the said trust estate and

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it under sect. 10 (1) of the Trustee Act, 1893 (see *Re Coates to Parsons*, 34 Ch. D. 370), but it is advisable that he should join in the deed as evidence of his desire to be discharged, and, if willing so to do, he can make the appointment under sub-sect. 4 of the above section.

premises under the said principal indenture and the trusts thereof, or in respect of any sale, investment, or change of investment, payment or other dealing, or anything done or omitted by the said [*retiring trustee*] in respect thereof, or otherwise in relation thereto

In witness whereof the parties hereto have set their hands and seals on the day and year first above written.

The First Schedule above referred to.

The Second Schedule above referred to.

IV. APPOINTMENT *of a* New Trustee *of* Freeholds *in* Place *of a* Retiring Trustee *by* Continuing Trustee. Vesting Declaration. (Short Form *by* Indorsement *on the* Settlement) (*q*).

THIS INDENTURE (*r*), made the —— day of ——, 19—, Between the within named [*continuing trustee*], of the first part; the within named [*retiring trustee*], of the second part; and [*new trustee*], of, &c., of the third part. Parties.

Whereas the within named [*deceased trustee*] died on the —— day of ——, 19—. Recitals: Death of trustee.

And whereas the said [*retiring trustee*] is desirous of being discharged from the trusteeship of the within written indenture, and the said [*continuing trustee*] is desirous of appointing the said [*new trustee*] to be a trustee thereof in the place of the said [*retiring trustee*], but it is not intended at present to supply the place of the said [*deceased trustee*]. Desire of retiring trustee to be discharged, and of desire to appoint new trustee.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In exercise of the statutory power in this behalf, and of every or any other power him enabling the said [*continuing trustee*], Appointment of new trustee.

(*q*) See notes to last precedent. It is assumed for the purpose of this precedent (1) that no consents are required by the settlement to the exercise of the statutory power of appointment; (2) that it is not intended to fill up the original number of trustees, see note (*n*), *ante*, p. 75; and (3) that there have been no sales or exchanges of the settled property.

(*r*) Stamp, 10*s*. for the appointment and a further 10*s*. for the vesting declaration. See *ante*, p. 72, note (*e*). The stamp must be adjudicated: see *ante*, p. 69.

IV. OF FREEHOLDS.

with the consent hereby testified of the said [*retiring trustee*], hereby appoints the said [*new trustee*] to be a trustee in place of the said [*retiring trustee*] for the purposes of the within written indenture.

Vesting declaration.

2. In pursuance of the said appointment, the said [*continuing trustee*] hereby declares that all the estate and interest now vested in the said [*continuing trustee*] and [*retiring trustee*] of and in [such of] the within mentioned messuages, lands, hereditaments, and premises [as remain unsold] shall forthwith vest in the said [*continuing trustee*] and [*new trustee*], as joint tenants, as trustees of the within written indenture upon the trusts and for the purposes of the same.

In witness, &c.

V. APPOINTMENT *of* Three New Trustees *of a Strict Settlement of* Freehold Estate, *in the place of a* Lunatic Trustee, *of a* Trustee *who is residing abroad, and of a* Bankrupt Trustee. (*By Separate Deed.*)

Parties.

THIS INDENTURE (*s*), made the —— day of ——, 19—, Between [*tenant for life and donee of the power*], of, &c., of the first part; [*continuing trustee*], of, &c., of the second part; and [*first new trustee*], of, &c., and [*second new trustee*], of, &c., and [*third new trustee*], of, &c., of the third part.

Recitals: of settlement (*t*);

Whereas by an indenture of settlement dated the —— day of ——, 19—, and made between, &c. [*parties*], the messuage or mansion-house known as —— Hall and the several manors, messuages, farms, lands and hereditaments, situate in the parishes of —— and —— respectively, in the county of ——, in the same indenture more particularly described, were conveyed to the uses, upon the trusts, and with, under and subject to the powers, provisions and declarations therein limited, declared and contained

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(*s*) Stamps, two of 10*s.* each: see *ante*, p. 72, note (*e*). The stamp must be adjudicated: see *ante*, p. 69.

(*t*) Where the instrument creating the trust is a deed, the appointment of new trustees is usually effected by endorsed or supplemental deed, forms of which are given in preceding and following precedents. In the case of new trustees of wills, the appointment must, of course, be effected by a separate deed reciting the will.

of or concerning the same premises, whereby the said [*tenant for life*] is now tenant for life thereof without impeachment of waste, with divers remainders over.

And by the same indenture it was declared that the statutory power of appointing new trustees thereof should be vested in and exerciseable by the said [*tenant for life*] during his life, and afterwards as therein mentioned.

of sales by tenant for life;

And whereas the said [*tenant for life*], in exercise of his statutory power of sale under or by virtue of the Settled Land Acts, 1882 to 1890, has lately sold certain of the hereditaments comprised in the said indenture of settlement, and the proceeds of such sale have been laid out partly in the purchase of other hereditaments, which by an indenture dated the —— day of ——, 19—, and made between [*parties*], have been conveyed to the uses of the said indenture of settlement, and partly in improvements of the said settled lands, in accordance with the provisions of the Acts hereinbefore referred to.

of lunacy of one trustee;

And whereas the said [*lunatic trustee*] is of unsound mind and has been so found by inquisition dated, &c. [*or*, "but has not been so found by inquisition"], and is now confined in a lunatic asylum.

of residence abroad of another trustee (*u*);

And whereas the said [*trustee resident abroad*] has remained out of the United Kingdom for more than twelve months and still remains abroad.

of bankruptcy of third trustee (*u*);

And whereas by an order of the High Court of Justice in Bankruptcy dated, &c., the said [*bankrupt trustee*] was adjudicated a bankrupt.

of desire to appoint new trustee.

And whereas the said [*tenant for life*] is desirous of appointing the said [*first new trustee*], [*second new trustee*], and [*third new trustee*], to be trustees of the said indenture of settlement in the place of the said [*lunatic trustee*], [*trustee resident abroad*], and [*bankrupt trustee*] respectively.

(*u*) It is advisable that evidence should be preserved of the events which give rise to the power to appoint new trustees, such as lunacy, residence abroad, &c. It is, of course, unlikely that there should be a lunatic trustee, a trustee abroad, and a bankrupt trustee at the same time in the same trust, but the precedent is framed so as to show the recitals which would apply to each of these cases. As to the statutory power to appoint in the event of the bankruptcy, residence abroad, or lunacy of a trustee, see Preliminary Note, *ante*, p. 69.

V. OF FREEHOLDS.

NOW THIS INDENTURE WITNESSETH as follows:—

Appointment of new trustee.

1. The said [*tenant for life*], in exercise of the power for this purpose by the joint operation of the said indenture of settlement and the statute in that behalf given to him, and of all other powers, if any, him hereunto enabling, hereby appoints the said [*first new trustee*], [*second new trustee*], and [*third new trustee*] respectively, to be trustees of the said indenture of settlement in the place of the said [*lunatic trustee*], [*trustee resident abroad*], and [*bankrupt trustee*] respectively, and to act jointly with the said [*continuing trustee*], for the purposes of the said recited indenture of settlement, or such of the same purposes as are still subsisting and capable of taking effect.

Vesting declaration (*x*).

2. AND the said [*tenant for life*] hereby declares that all the estate and interest now vested in the said [*four original trustees*], of and in such of the said messuage or mansion-house, manors, messuages, lands, hereditaments and premises comprised in the said indenture of settlement as remain unsold, and also of and in all the hereditaments and premises comprised in the said indenture of the —— day of —— respectively, shall forthwith vest in the said [*continuing and new trustees*], as trustees of the said indenture of settlement, and as joint tenants, upon the trusts and for the purposes of the same.

IN WITNESS, &c.

VI. APPOINTMENT *of a* NEW TRUSTEE *by Continuing and Retiring Trustees under the Statutory Power.* GRANT *of* FREEHOLDS. ASSIGNMENT *of* LEASEHOLDS. COVENANT TO SURRENDER COPYHOLDS. (*By Supplemental Deed.*)

THIS INDENTURE (*y*), made the —— day of ——, 19—,

Parties.

BETWEEN [*continuing trustee*], of, &c., and [*retiring trustee*] (*z*), of, &c., of the one part; and [*new trustee*], of, &c., of the other part;

Deed expressed to be

AND SUPPLEMENTAL to an indenture of settlement, dated,

(*x*) If the original trustees took no estate or interest under the settlement, the vesting declaration will be omitted.

(*y*) Stamps, three of 10*s.* each: (1) for the appointment, (2) for the grant, and (3) for the covenant to surrender; but the stamp must be adjudicated: see *ante*, p. 69. As to registered land, see Preliminary Note, *ante*, p. 70.

(*z*) As to the retiring trustee joining in the appointment "if willing to act," see *ante*, p. 75, note (*p*).

&c., and expressed to be made between [*parties*], and hereinafter referred to as the principal indenture; AND ALSO SUPPLEMENTAL to an indenture dated the —— day of ——, 19—, and expressed to be made between [*parties*], being an appointment of the said [*continuing trustee*], to be a trustee of the principal indenture in the place of the said [*original trustee*], deceased.

supplemental to settlement, and to previous appointment of a new trustee.

WHEREAS [*tenant for life*] in the principal indenture named died on the —— day of ——, 19—, and [A. B.], an infant, is now the tenant in tail in possession of the messuages, lands and hereditaments comprised in and settled by the principal indenture.

Recitals: of death of tenant for life, &c.;

AND WHEREAS on the —— day of ——, the copyhold hereditaments hereinafter covenanted to be surrendered were duly surrendered to the use of the said [*original trustee*], deceased, and the said [*retiring trustee*] and [*continuing trustee*], and their heirs pursuant to the covenant in that behalf in the principal indenture contained, and the said [*original trustee, retiring trustee, and continuing trustee*], were on the same day admitted thereto.

of surrender of copyholds and admittance thereto;

AND WHEREAS the said [*retiring trustee*] is desirous of being discharged from the trusts of the principal indenture, and the said [*continuing and retiring trustees*] are desirous of appointing the said [*new trustee*] to be a trustee thereof in the place of the said [*retiring trustee*], but it is not intended at present to supply the place of the said [*original trustee*], deceased (*a*).

of desire of retiring trustee to be discharged, &c.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In exercise of the power for this purpose by the statute in that behalf given to the said [*continuing and retiring trustees*], and of every or any other power enabling them in this behalf, they the said [*continuing and retiring trustees*] hereby appoint the said [*new trustee*] to be a trustee in the place of the said [*retiring trustee*] for the purposes of the said principal indenture or such of the same purposes as are still subsisting and capable of taking effect.

Appointment of new trustee.

2. In pursuance of the said appointment the said [*continuing trustee*], and [*retiring trustee*], hereby grant, assign, and convey

Grant of freeholds and assignment of leaseholds (*b*).

(*a*) See *ante*, p. 75, note (*n*).

(*b*) As to the assignment of leaseholds by a person to himself and another, see Law of Property Amendment Act, 1859, s. 21; and see similar provision as to freeholds and things in action contained in C. A., 1881, s. 50.

VI. OF FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

unto the said [*continuing trustee*] and [*new trustee*] all such of the said messuages, lands, hereditaments, and premises comprised in and settled by the principal indenture, or which are by any means vested in the said [*continuing trustee*] and [*retiring trustee*], upon the trusts thereof, and which are of freehold or leasehold tenure. To HOLD such of the said premises hereinbefore conveyed as are of freehold tenure, unto and to the use of the said [*continuing trustee*] and [*new trustee*], their heirs and assigns, and as to such of the said premises as are of leasehold tenure unto the said [*continuing trustee*] and [*new trustee*] for the residue of the respective terms for which the same are respectively holden, subject nevertheless to the leases and tenancies affecting the same premises respectively, AND upon the trusts and for the purposes of the principal indenture or such of the same as are now subsisting and capable of taking effect.

Covenant to surrender copyholds (*a*).

3. In further pursuance of the said appointment, each of them the said [*continuing trustee*] and [*retiring trustee*], so far only as relates to the acts of himself and his own heirs, doth hereby covenant with the said [*new trustee*], his heirs and assigns, that they the said [*continuing trustee*] and [*retiring trustee*], or their heirs, will forthwith, at the cost of the trust estate, well and effectually surrender into the hands of the lord or lady of the manor of ——, according to the custom thereof, ALL SUCH of the said messuages, lands, hereditaments, and premises comprised in and settled by the principal indenture, or which are by any means vested in the said [*continuing trustee*] and [*retiring trustee*] upon the trust thereof, and which are of copyhold or customary tenure, To THE USE of the said [*continuing trustee*] and [*new trustee*], their heirs and assigns, according to the custom of the said manor, and subject to the tenancies affecting the same premises, but upon the trusts and for the purposes of the prin-

As to vesting copyholds in the new trustees.

(*a*) In this precedent there is a recital that the continuing and retiring trustees have been admitted to the copyholds. It is necessary, therefore, that they should covenant to surrender, but if their interest in the copyholds was merely equitable, then it could be conveyed by a vesting declaration, or would even pass to the new trustee by virtue of his appointment. If no surrender has been made the tenant on the Court rolls must surrender to the trustees. If a surrender has been made to existing trustees, they must surrender to the new trustees, but if all the surrenderees are dead, the customary heir of the survivor must be admitted and surrender to the new trustees.

cipal indenture, or of such of the same as are now subsisting and capable of taking effect.

4. Each of them, the said [*continuing trustee*] and [*retiring trustee*], so far as relates only to his own acts and deeds, hereby covenants with the said [*new trustee*] that they the said [*continuing trustee*] and [*retiring trustee*] respectively have not done, or knowingly permitted, or been party or privy to any act, deed, matter, or thing whatsoever, whereby the premises hereby granted and covenanted to be surrendered respectively are, is, or may be, impeached, charged, incumbered, or in any way affected, or whereby the said [*continuing trustee*] and [*retiring trustee*] respectively cannot, or ought not, to grant and covenant to surrender the same premises respectively in manner aforesaid.

Covenant against incumbrances (*b*).

In witness, &c.

VII. APPOINTMENT *of* New Trustees *of a* Term *of* Years *created by an* Indenture *of* Settlement *of* Real Estate *by the* Personal Representative *of the* Last Surviving Trustee. Vesting Declaration. (*By* Indorsement.) (*c*).

THIS INDENTURE (*d*), made the —— day of ——, 19—, Between [*executor of last surviving trustee*], of, &c. (hereinafter called "the appointor"), of the first part, [X. Y.], of, &c., and [Y. Z.], of, &c., of the second part, and [*first new trustee*], of, &c., and [*second new trustee*], of, &c., of the third part.

Parties.

(*b*) It has hitherto been usual for deeds of appointment of new trustees containing a conveyance of the trust property to contain also a covenant by the conveying parties that they have not incumbered. The statutory covenant implied by a conveyance by the old trustees "as trustees" does not appear to be here appropriate, as its effect would be to make the *continuing* trustees both covenantors and covenantees. See the first paragraph of sect. 7 of the Conveyancing Act, 1881; *Ellis* v. *Kerr*, [1910] 1 Ch. 529; *Napier* v. *Williams*, [1911] 1 Ch. 361; Wolstenholme, Conveyancing, &c. Acts, 10th ed. p. 36.

(*c*) The statutory power is exercisable by the representatives of a sole trustee: *Re Shafto*, 29 Ch. D. 247. See, now, as to the extent to which the representative of a sole or last surviving trustee is, until the appointment of a new trustee, capable of exercising any power or trust given to such trustee, sect. 8 of C. A. 1911.

(*d*) Stamps, two of 10*s*. each: see *ante*, p. 72, note (*e*); but the stamp must be adjudicated: see *ante*, p. 69.

VII. OF TERM OF YEARS.

Recitals: of death of one trustee; of will of the other trustee; of death and probate.

WHEREAS the within named [C. D.] died on the —— day of ——.

AND WHEREAS the within named [E. F.] by his will dated the —— day of ——, appointed the appointor to be the sole executor thereof.

AND WHEREAS the said [E. F.] died on the —— day of —— without having revoked or altered his said will, and the same was proved by the appointor in the Principal Probate Registry on the —— day of ——.

Request to appointor to make the appointment.

AND WHEREAS the appointor has been requested by the said [X. Y.] and [Y. Z.], who, as the only younger children of the within named ——, are beneficiaries under the trusts of the within mentioned term of 1,000 years, to appoint the [*first new trustee*] and [*second new trustee*] to be trustees in manner and for the purposes hereinafter mentioned.

NOW THIS INDENTURE WITNESSETH as follows:—

Appointment of new trustee.

1. The appointor, in exercise of the power given to him by the statute in that behalf, and of every other power him hereunto enabling, appoints the said [*first new trustee*] and [*second new trustee*] to be trustees of the term of —— years created by the within written indenture in the place of the said [C. D.] and [E. F.], deceased, for the purposes by the same indenture declared of the said term.

Vesting declaration.

2. The said appointor, with the assent of the said [X. Y.] and [Y. Z.], hereby declares that all the messuages, lands, and hereditaments comprised in the within written indenture, and thereby limited or settled to the use of the said [C. D.] and [E. F.] for the within mentioned term of 1,000 years AND all other hereditaments of whatsoever tenure, which have become or are now comprised in or subject to the trusts of the said term, and all the estate and interest at law or in equity of, and in the said hereditaments, which was vested in the said [C. D.] and [E. F.], or the survivor of them, or is now vested in the appointor as such executor as aforesaid, shall forthwith vest in the said [*first new trustee*] and [*second new trustee*] as trustees for the residue of the said term of 1,000 years, and as joint tenants, upon the trusts and for the purposes declared and contained of or concerning the same in the within written indenture.

IN WITNESS, &c.

VIII. DEED *of* APPOINTMENT *of a* NEW TRUSTEE *in the* PLACE *of a* RETIRING TRUSTEE *of a* WILL, *where the* PROPERTY *consists of* MONEY INVESTED *on* MORTGAGE *and in the* FUNDS; *and* DECLARATION *of* TRUST *by* CONTINUING *and* NEW TRUSTEE.

VIII. WHERE THE TRUST EMBRACES MONEYS ON MORTGAGE AND IN THE FUNDS.

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN [*retiring trustee*], of, &c., of the first part, [*appointor*], of, &c., of the second part, [*new trustee*], of, &c., of the third part, and [*continuing trustee*], of, &c., and the said [*new trustee*], of the fourth part. Parties.

WHEREAS [*testator*], of, &c., deceased, duly made and executed his will, dated the —— day of ——, and thereby, after bequeathing certain legacies, devised and bequeathed all his real estate, and all the residue of his personal estate to [*trustees*], their heirs, executors, administrators, and assigns, upon trust to sell and convert the same into money, and invest the produce thereof as therein mentioned; and to hold the same upon the trusts in the said will mentioned; and he declared that the said [*appointor*] should during his life have the power to appoint new trustees of his said will; and the said testator appointed the said [*trustees*] executors of his said will. Recital of will; of power to appoint new trustees;

AND WHEREAS the said [*deceased trustee*] died in the testator's lifetime. of death of trustee;

AND WHEREAS the said testator died on the —— day of ——, 19—, without having revoked or altered his said will, which was duly proved by the executors therein named other than the said [*deceased trustee*] in the Principal Probate Registry on the —— day of ——. of death of testator;

AND WHEREAS the said [*continuing and retiring trustees*] realized the said testator's real estate and the residue of his personal estate, and, out of the moneys arising therefrom, they advanced the sum of £—— to [*mortgagor*], of, &c., on security of certain hereditaments situate in the parish of ——, in the county of ——, which, by an indenture of mortgage, dated, &c., were conveyed by way of mortgage unto and to the use of the said [*continuing and retiring trustees*], their heirs and assigns, for securing the said Realization of estate and loan on mortgage.

(*e*) Stamp, 10*s*.

VIII. WHERE THE TRUST EMBRACES MONEYS ON MORTGAGE AND IN THE FUNDS.

principal sum and interest; and with the residue of the said trust moneys, the said [*continuing and retiring trustees*] purchased the sum of £——, Two and a Half per Cent. Consolidated Stock.

of proposed change of trustees:

And whereas the said [*retiring trustee*] is desirous of being discharged from the trusts of the said will; And the said [*appointor*] is desirous of appointing the said [*new trustee*] to be a trustee in the place of the said [*retiring trustee*].

of intended transfer of mortgage and stock into the names of continuing and new trustees.

And whereas it is intended that by an indenture of transfer of mortgage of even date herewith, and expressed to be made between, &c., the said mortgage debt, and all securities for the same, shall be vested in the said [*continuing trustee*] and [*new trustee*], and that immediately after the execution of these presents the said sum of £——, Two and a Half per Cent. Consolidated Stock, shall be transferred into the joint names of the said [*continuing trustee*] and [*new trustee*].

NOW THIS INDENTURE WITNESSETH as follows:—

Donee of power appoints new trustee.

1. In exercise of the power for this purpose by the said will of the said [*testator*], given to the said [*appointor*], and of every other power enabling him in this behalf, he, the said [*appointor*], hereby appoints the said [*new trustee*], in the place of the said [*retiring trustee*], to be a trustee of the will of the said [*testator*], for the purposes of the said will, or such of the same purposes as are still subsisting and capable of taking effect.

Declaration of trust as to mortgage-moneys, &c.

2. The said [*continuing trustee*] and [*new trustee*] hereby declare that they and the survivor of them, and the heirs, executors, or administrators of such survivor, will stand and be possessed of, and interested in, the said trust premises as and when the same shall have been transferred to and vested in them respectively as aforesaid, upon the trusts, and for the purposes, and with, under and subject to the powers, provisions and declarations expressed and contained in and by the said will, or such and so many of the same respectively as are now subsisting and capable of taking effect.

In witness, &c.

IX. RETIREMENT *and* DISCHARGE *of a* TRUSTEE, *without the* APPOINTMENT *of a* NEW TRUSTEE *in his place, under the Trustee Act,* 1893, and DECLARATION VESTING *the* TRUST PROPERTY *in the* CONTINUING TRUSTEES (*by* SUPPLEMENTAL DEED).

IX. RETIREMENT AND DISCHARGE OF TRUSTEE.

THIS INDENTURE (*f*), made the —— day of ——, 19—, BETWEEN [*appointor*], of, &c., of the first part, [*retiring trustee*], of, &c., of the second part, and [*continuing trustee*], of, &c., and [*other continuing trustee*], of, &c., of the third part, AND SUPPLEMENTAL to an indenture of settlement dated, &c., and made between, &c., and hereinafter referred to as "the principal indenture" (being a settlement made previously to the marriage then intended, and shortly afterwards solemnized between the said [*appointor*] and [*wife*], his wife): AND ALSO SUPPLEMENTAL to another indenture, dated, &c., and made between, &c., which last-mentioned indenture is itself supplemental to the principal indenture, and is hereinafter referred to as "the first supplemental indenture" (being an appointment of the said [*retiring trustee*] to be a trustee of the principal indenture in the place of A. B., deceased): AND ALSO SUPPLEMENTAL to another indenture, dated, &c., and made, &c., which last-mentioned indenture is also itself supplemental to the principal indenture and to the first supplemental indenture, and is hereinafter referred to as "the second supplemental indenture" (being an appointment of the said [*continuing trustee*] to be a trustee of the said principal indenture in the place of C. D., also deceased).

Parties.

Deed expressed to be supplemental to settlement, and deeds of appointment of new trustees.

WHEREAS the said [*wife*] died on the —— day of ——, 19—.

Death of wife.

AND WHEREAS since the date of the second supplemental indenture the said [*retiring trustee*] and [*continuing trustees*] have, with the consent of the said [*appointor*], in execution of the trusts, and in pursuance of the directions contained in the principal indenture, sold the messuage and hereditaments situate at ——

Of sale of part of trust property;

(*f*) See Trustee Act, 1893, ss. 11, 12, as to the retirement of a trustee where there are more than two; and as to the retirement of a trustee where the Public Trustee is a co-trustee, see Public Trustee Act, 1906, s. 5 (2). The stamp will be 10*s*. for the retirement and another 10*s*. for the vesting declaration: see Finance Act, 1902, s. 9; and Preliminary Note, *ante*, p. 68. The stamp must be adjudicated.

IX. RETIREMENT AND DISCHARGE OF TRUSTEE.

mentioned in the principal indenture, and being part of the property thereby settled, and have invested the proceeds of the said sale in the purchase in their joint names of £—— Debenture Stock of the —— Railway.

of present state of trust property;

AND WHEREAS the several stocks, shares, and other investments now subject to the trusts of the principal indenture are set forth in the schedule hereto.

of desire of trustee to be discharged;

AND WHEREAS the said [*retiring trustee*] is desirous of being discharged from the trusts of the principal indenture.

of transfer of trust funds.

AND WHEREAS the said stocks, shares, and other investments mentioned in the said schedule have already been transferred into the names of the said [*continuing trustees*] alone (*ff*).

NOW THIS INDENTURE WITNESSETH as follows:—

Declaration of desire to be discharged, &c.

1. The said [*retiring trustee*] hereby declares that he is desirous of being discharged from the trusts of the principal indenture.

Consent to such discharge, &c.

2. The said [*continuing trustees*] and [*appointor*] hereby consent to the discharge of the said [*retiring trustee*] from the trusts aforesaid, and to the vesting in the said [*continuing trustees*] alone of the trust property now held upon or subject to the trusts of the principal indenture.

Vesting declaration (*fff*).

3. The parties hereto accordingly declare that all chattels subject to the trusts of the principal indenture, and the right to recover all debts or other things in action so subject, shall forthwith vest in the said [*continuing trustees*] alone, their executors, administrators, and assigns, for all such estate and interest as the said [*retiring and continuing trustees*], or any of them, had therein respectively, immediately before the execution of these presents, and upon the trusts, and subject to the provisions applicable thereto, by virtue of the principal indenture or otherwise.

4. [*Declaration of trust of stocks, &c.* "so transferred as aforesaid," *as in Precedent VIII., clause 2, p. 86, mutatis mutandis.*]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*ff*) If the transfer of the stocks, &c. is deferred till after the appointment is made (see note (*o*), p. 75), this recital will have to be altered accordingly by adapting the recital of transfer on p. 75, *ante*.

(*fff*) The vesting declaration must be made by all the parties: see sect. 12, sub-sect. (2) of the Trustee Act, 1893.

X. APPOINTMENT *of a* NEW TRUSTEE *of a* SETTLEMENT *created by* WILL *for the purposes of the* SETTLED LAND ACTS *where the original* TRUSTEES *have been appointed by the* COURT.

X. FOR PURPOSES OF SETTLED LAND ACTS.

THIS INDENTURE (*g*), made the —— day of ——, BETWEEN [*surviving trustee*], of, &c., and [*surviving trustee*] of, &c., of the first part; [*tenant for life*], of, &c., of the second part; and [*new trustee*], of, &c., of the third part. Parties.

WHEREAS [*testator*], late of, &c., deceased, duly made and executed his will, dated, &c., and thereby gave and devised all his messuages, lands and hereditaments, situate at, &c., To the use of the said [*tenant for life*], without impeachment of waste, with divers remainders over, but the said will contained no power of or trust for sale of the hereditaments thereby settled [*if the testator died after* 1882, *add:* "or of any other hereditaments thereby devised, and no appointment of trustees for the purposes of the Settled Land Acts, 1882 to 1890"]. Recitals: of will;

AND WHEREAS the said [*testator*] died on the —— day of ——, without having revoked or altered his said will, and seised in fee simple in possession of the said hereditaments and premises thereby devised, and the said will was proved in the Principal Probate Registry on the —— day of ——. of death of testator;

AND WHEREAS by an order of the Chancery Division of the High Court of Justice, made on the —— day of ——, by Mr. Justice ——, in the matter of ——, and of the Settled Land Acts, 1882 to 1890, upon the application of the said [*tenant for life*], the said [*surviving trustees*] and [*deceased trustee*], late of, &c., deceased, were appointed to be trustees of the settlement created by the said will for the purposes of the said Acts. of appointment of trustees by the Court,

AND WHEREAS the said [*deceased trustee*] died on the —— day of ——. of death of trustee;

AND WHEREAS the said [*continuing trustees*] are desirous of appointing the said [*new trustee*] to be a trustee in the place of the said [*deceased trustee*], and the said [*tenant for life*] has consented to such appointment. of desire to appoint new trustee.

NOW THIS INDENTURE WITNESSETH that, for effectuating the said desire the said [*continuing trustees*], in exercise of the powers given to them by the statute in that behalf, and of Appointment of new trustee.

(*g*) Stamp, 10*s*.

X. FOR PURPOSES OF SETTLED LAND ACTS.

every other power them enabling, do hereby, with the consent and approbation of the said [*tenant for life*] (testified by his executing these presents), appoint the said [*new trustee*] to be a trustee of the settlement created by the said will for the purposes of the Settled Land Acts, 1882 to 1890, in the place of the said [*deceased trustee*], and to act jointly with them the said [*continuing trustees*], for the purposes of the said Acts (*h*).

IN WITNESS, &c.

XI. APPOINTMENT *of* SEPARATE SETS *of* TRUSTEES *of* DISTINCT *parts of* PERSONALTY *by the* PERSONAL REPRESENTATIVE *of the last surviving Trustee.* VESTING DECLARATION (*i*).

Parties.

THIS INDENTURE (*k*), made the —— day of ——, 19—, BETWEEN [*representative of last surviving trustee*], of the first part; E. D. [*tenant for life of one share*], the wife of F. D., of, &c., and the said F. D., of the second part; [*new trustee of first share*], of, &c., and [*other new trustee of first share*], of, &c.,

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(*h*) As to the powers of trustees appointed by the Court, see Trustee Act, 1893, s. 37. The consent of the tenant for life is desirable, but not absolutely necessary, as the appointment is made under the Trustee Act, 1893, ss. 10 and 47 (1), and not under any power conferred by the S. L. A. As the "trustees of the settlement" take no estate or interest in the property, no vesting declaration or conveyance to them is necessary or proper.

(*i*) See sect. 10 (1), (2) (b), and sect. 12 of Trustee Act, 1893, as to the appointment of separate trustees and the vesting declaration. The statutory as well as the ordinary express power applies to the case of a trustee named in the will predeceasing the testator, and is exercisable by the personal representative of the last surviving trustee; but it would not apply in the event of all the trustees named in the will dying in the testator's lifetime: *Re Orde*, 24 Ch. D. 271; *Re Ambler*, 59 L. T. 210; *Nicholson* v. *Field*, [1893] 2 Ch. 511. A deceased sole trustee is a "last surviving or continuing trustee": *Re Shafto*, 29 Ch. D. 247. As to the powers of the personal representative of a "sole" or "last surviving" trustee, pending the appointment of new trustees, see Conveyancing Act, 1911, s. 8.

(*k*) Having regard to the Stamp Act, 1891, s. 4, it would seem that four 10*s*. stamps would be required for this deed—one each for the separate appointments and two for the vesting declaration, as it operates as a double conveyance; but the stamps must be adjudicated: see *ante*, p. 69.

of the third part; and [*new trustee of second share*], of, &c., and [*other new trustee of second share*], of, &c., of the fourth part.

Recitals: of will of testator;

Whereas [*testator*], late of, &c., deceased, duly made and executed his will dated the —— day of ——, and thereby gave, devised and bequeathed all the residue of his real and personal estate and effects after and subject to the payment thereout of his personal and testamentary expenses and debts, and of the specific and pecuniary legacies and annuities therein respectively mentioned, unto and to the use of [*trustees*], their heirs, executors, and administrators, according to the tenure or nature of the same premises respectively, upon trust to sell and convert the same into money, and to invest the proceeds of such sale and conversion as therein mentioned, and to stand possessed of such investments and of the dividends and income thereof, as to one equal moiety or half part thereof, upon trust for his son C. B. during his life, and after his death for the benefit of the issue of his said son, with remainders over as therein mentioned; and as to the other equal moiety or half part of the said trust premises upon trust for his daughter E. D. during her life, and from and after her decease for the benefit of her husband F. D. and her issue, with remainders over as in the said will is mentioned, and the said [*testator*] empowered his trustees to appropriate any part of his residuary estate in its then state of investment in or towards satisfaction of any share in his residuary estate (*kk*), and the said [*testator*] thereby appointed [*trustees*] to be the executors thereof.

of codicils;

And whereas the said [*testator*] duly made and executed two several codicils dated respectively the —— day of ——, and the —— day of ——, to his said will, and thereby gave certain specific and pecuniary legacies, but did not otherwise alter his said will.

of death of testator and probate of will;

And whereas the said [*testator*] died on the —— day of ——, without having revoked or altered the said will, except so far as the same was altered by the said codicils, and the said will and codicils were on the —— day of —— proved in the Principal Probate Registry by the said [*trustees*].

of payment of funeral expenses, &c. (*l*);

And whereas all the [estate duty, settlement estate duty, and increment value duty which became payable on the death of the

(*kk*) As to the trustee's power of appropriation under L. T. Act, 1897, s. 4 (1), see Vol. II. p. 599, note (*w*).

(*l*) If the testator died after 1st of August, 1894, payment of estate and

XI. OF SEPARATE SETS OF TRUSTEES OF DISTINCT SHARES.

said [*testator*], and] the funeral and testamentary expenses and debts of the said [*testator*], and the legacies bequeathed by his said will and codicils have [long since] been fully paid and satisfied, and all the annuities given by the said will have ceased by the deaths of the respective annuitants.

of sale and conversion of testator's estate:

And whereas the real and personal estate of the said [*testator*] was sold and converted into money, and the proceeds of such sale and conversion, after making thereout the payments aforesaid, were invested in manner directed by his said will, and the present investments of the same trust premises are specified in the schedule hereto.

of death of a trustee;

And whereas the said [*one of the original trustees*] died on the —— day of ——, 19—.

of death of testator's son;

And whereas the said [*testator's son* C. B.] died, &c., leaving issue him surviving two sons and three daughters, namely, &c., all of whom are now living, being infants and unmarried.

of death of last surviving trustee;

And whereas the said [*last surviving trustee*] died on the —— day of ——, 19—, having by his will (which was duly proved in the District Probate Registry at ——) appointed the said [*representative*] to be the sole executor thereof.

of appropriation of trust property;

And whereas the investments specified in the first part of the said schedule, forming one equal moiety or half share of the trust premises now subject to the trusts of the said will, have been appropriated by the said [*representative*], to be held upon the trusts declared by the said will for the benefit of the issue of the said C. B., deceased, with remainders over; and the investments specified in the second part of the said schedule, forming the other moiety or half share of the said trust premises, have been appropriated by the said [*representative*], to be held upon the trusts declared by the said will for the benefit of the said E. D. and F. D., her husband, and of her issue, with remainders over.

of desire to appoint separate sets of trustees.

And whereas the said [*representative, tenant for life and her husband*], respectively, are desirous that separate trustees shall be appointed of the several parts of the trust premises so held on trusts distinct from those relating to the other parts of the said trust premises as hereinbefore is mentioned.

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settlement estate duty should be mentioned: see Finance Act, 1894, s. 24; and if after 29th of April, 1910, of increment value duty as well: see Finance (1909-10) Act, 1910, s. 1 (b).

XI. OF SEPARATE SETS OF TRUSTEES OF DISTINCT SHARES.

NOW THIS INDENTURE WITNESSETH as follows:

1. In pursuance of the said desire and in exercise of the power for this purpose given to him by the statute in that behalf, and of every or any other power enabling him, he the said [*representative*], with the consent of the parties hereto of the second part, hereby appoints the said [*trustees of first share*] to be the trustees of the said will in the place of the said [*deceased trustees*] so far as relates to the one equal moiety or half share of the said trust premises so directed by the said will to be held as aforesaid upon trust for the benefit of the said C. B., deceased, and his issue, with remainders over.

Appointment of trustees of one share.

2. In further pursuance of the said desire and in exercise of the power for this purpose given to him by the statute in that behalf, and of every or any other power enabling him, with the consent of the parties hereto of the second part, he the said [*representative*] appoints the said [*trustees of second share*] to be the trustees of the said will in the place of the said [*deceased trustees*] so far as relates to the one other equal moiety or half share of the said trust premises so directed by the said will to be held as aforesaid for the benefit of the said E. D., and F. D., her husband, and of her issue, with remainders over.

Appointment of trustees of the other share.

3. The said [*trustees of the first share*] and the said [*trustees of the second share*] respectively hereby consent to act as and be trustees of the said will so far as relates to the several moieties of the trust premises so held on distinct trusts as aforesaid.

4. The said [*representative*] with the assent of the said E. D. and F. D. hereby declares that all the estate and interest of him the said [*representative*] in the said trust premises, and the investments thereof specified in the said schedule hereto, and the right to recover and receive all debts and things in action, subject to the trusts of the said will, shall vest in the persons and in manner hereinafter mentioned, that is to say: so far as relates to the one equal moiety or half part of the said trust premises so directed by the said will to be held as aforesaid for the benefit of the said C. B., deceased, and his issue, with remainders over, and the several investments representing that moiety, and which are specified in the first part of the said schedule, in the said [*trustees of the first share*] as joint tenants, for the purposes of the trusts by the said will declared of the same moiety; and so far as relates to the other one equal moiety

Vesting declaration.

XI. OF SEPARATE SETS OF TRUSTEES OF DISTINCT SHARES.

or half part of the said trust premises so directed by the said will to be held as aforesaid for the benefit of the said E. D. and F. D., her husband, and her issue, with remainders over, and the several investments representing that moiety, and which are specified in the second part of the said schedule, in the said [*trustees of second share*] as joint tenants, for the purposes of the trusts by the said will declared of such last mentioned moiety.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

FIRST PART.

SECOND PART.

XII. DISCLAIMER *by a* TRUSTEE *of a* SETTLEMENT *and* APPOINTMENT *of a* NEW TRUSTEE *in his* PLACE *by the* CONTINUING TRUSTEE. VESTING DECLARATION. (*By* INDORSEMENT) (*m*).

Parties.

THIS INDENTURE (*n*), made the —— day of ——, 19—, BETWEEN the within named [*disclaiming trustee*] of the first part; the within named [*continuing trustee*], of the second part; the within named [*husband*] and [*wife*], his wife, in the within written indenture called [*maiden name*], spinster (hereinafter called "the

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(*m*) In this precedent the appointment is made by the husband and wife, but if the power of appointment is not vested in them the appointment must be made by the continuing trustee with the necessary variations, which can be adapted from Prec. III., *ante*, p. 74.

(*n*) Stamps, three of 10*s*. each, for the disclaimer, appointment, and vesting declaration; but the stamp must be adjudicated: see *ante*, p. 69. There seems to be no doubt that a "disclaiming" trustee is a "refusing" trustee within the statutory and ordinary express power, although he technically never becomes a trustee: see Preliminary Note, *ante*, p. 69. The trust estate passes to him subject to his right to disclaim: *Standing* v. *Bowring*, 31 Ch. D. 282; but he ought not to convey the property, as that would be repugnant to his disclaimer: *Urch* v. *Walker*, 3 Mylne & Cr. 702. A trustee may disclaim by conduct, but a formal disclaimer should if possible be made.

appointors"), of the third part; and [*new trustee*], of, &c., of the fourth part. XII. OF TRUSTS OF A SETTLEMENT AND APPOINTMENT OF NEW TRUSTEE.

WHEREAS the marriage of the said [*husband*] and [*wife*] was duly solemnized shortly after the date of the within written indenture. Recital of marriage:

AND WHEREAS the said [*disclaiming trustee*] has never executed the within written indenture, nor acted or interfered in the trusts thereof, and is desirous of renouncing and disclaiming the same. of trustee's desire to disclaim;

AND WHEREAS the appointors are desirous of appointing the said [*new trustee*] as trustee of the principal indenture in the place of the said [*disclaiming trustee*]. of desire to appoint new trustee;

AND WHEREAS it is intended that the stocks, shares, and securities now subject to the within written indenture, the particulars whereof are set out in the schedule hereto, shall forthwith be transferred by the said [*continuing trustee*] into the joint names of the said [*continuing trustee*] and [*new trustee*]. of intention to transfer stocks, &c.

NOW THIS INDENTURE WITNESSETH as follows:—

1. The said [*disclaiming trustee*] hereby renounces and disclaims the office of trustee of the within written indenture, and all estates, property, trusts, powers and privileges thereby given to or vested in him, either alone or jointly with any other person or persons whomsoever. Disclaimer.

2. The appointors, in exercise of the power in that behalf given to them by the within written indenture, and of every other power them hereunto enabling, hereby appoint the said [*new trustee*] to be a trustee in place of the said [*disclaiming trustee*], and to act jointly with the said [*continuing trustee*] for the purposes of the within written indenture, or such of the same purposes as are still subsisting and capable of taking effect. Appointment of new trustee.

3. The appointors hereby declare that all the estate and interest now vested in the said [*continuing trustee*] of and in the [messuages, lands, and hereditaments] [several bond debts and interest, policy moneys and things in action], comprised in and now subject to the trusts of the within written indenture, shall forthwith vest in the said [*continuing trustee*] and [*new trustee*], their [heirs], executors, administrators, and assigns [respectively], as joint tenants, upon and for the trusts and purposes upon and for which the same ought to be held by virtue of the within written indenture or otherwise.

XII. OF TRUSTS OF A SETTLEMENT AND APPOINTMENT OF NEW TRUSTEE.

4. [*Declaration of trust of stocks, &c. to be transferred, see* ante, *p.* 86.]

In witness, &c. (*o*).

The Schedule above referred to.

XIII. APPOINTMENT *of a* New Trustee *of a* Will *in the* Place *of one who has* Disclaimed *where the* Estate *has not been* Realized, *the* Number *of* Trustees *being* Reduced (*p*).

THIS INDENTURE, made the —— day of ——,

Parties. Between [*appointor*], of, &c., of the first part; [*acting trustee*], of, &c., of the second part; and [*new trustee*], of, &c., of the third part.

Recitals: of will; death of testator and probate; Whereas [*recite will creating the trust: see* ante, *Precedent VIII., p.* 85; *also death of testator and probate, ibid.*].

And whereas the said [*one of the trustees appointed by the will*] died in the lifetime of the said [*testator*], deceased.

of death of a trustee; And whereas the said [*disclaiming trustee*] renounced probate of the said will, and refused to act in the trusts thereof, and has not in any way interfered in the administration of the estate and effects of the said [*testator*] or in the execution of the trusts of the said will.

of renunciation of probate, &c. by disclaiming trustee;

of disclaimer; And whereas the said [*disclaiming trustee*] by a deed poll under his hand and seal dated the —— day of ——, has renounced and disclaimed all the real and personal estate and premises by the said will devised and bequeathed to him jointly with the said [*acting trustee and deceased trustee*], and all trusts, powers, and authorities vested in him the said [*disclaiming trustee*], whether

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(*o*) If the trust comprises policies or other choses in action notice should be given to the insurance office, debtors, or trustees, as the case may be.

(*p*) Stamps, two of 10*s.* each; but the stamp must be adjudicated: see *ante,* p. 69. As to a disclaiming trustee being a "refusing" trustee, see Preliminary Note, p. 69, *ante;* and as to reducing the number of trustees on an appointment under the statutory power, see Trustee Act, 1893, s. 10 (2) (c). If the number may be reduced under the power in the will, this should appear in the recital. In that case the appointment may be made under the power in the will, otherwise it must be made under the joint operation of the will and the statute.

XIII. IN PLACE OF ONE WHO HAS DISCLAIMED.

jointly with the said [*acting trustee*] or otherwise, and the office of executor and trustee under the said will.

of administration of estate;

And whereas the estate of the said [*testator*], deceased, has not yet been fully got in, nor have his debts or the legacies given by his said will been paid or satisfied.

of desire to appoint trustee.

And whereas the said [*appointor*] is desirous of appointing the said [*new trustee*] to be a trustee of the said will in the place of the said [*disclaiming trustee*] so disclaiming as aforesaid; but it is not intended at present to appoint any person in the place of the said [*trustee*] so deceased as aforesaid, to be a trustee of the said will (*pp*).

NOW THIS INDENTURE WITNESSETH as follows:—

Appointment of trustee.

1. In exercise of the power in this behalf given to him by the [joint operation of the] said will [and the statute in that behalf], and of every other power him hereunto enabling, the said [*appointor*] hereby appoints the said [*new trustee*] to be a trustee of the said will in the place of the said [*disclaiming trustee*].

Vesting declaration.

2. The said [*appointor*] hereby declares that all and singular the hereditaments, property, and chattels, and the right to recover any debt or other chose in action which are now or may become subject to the trusts of the said will, and are capable of being vested by this declaration, shall vest in the said [*acting and new trustee*] for all the estate and interest now subject to the trusts of the said will, and upon the trusts and subject to the powers and provisions applicable thereto respectively by virtue of the said will or otherwise.

Saving rights of continuing trustee as executor.

3. Provided always, that nothing herein contained shall be taken as an assent by the said [*acting trustee*] as executor, or so as in anywise to affect his rights or powers as executor of the said will with respect to getting in or administering the estate and effects of the said [*testator*], deceased, or otherwise howsoever in relation thereto.

In witness, &c.

(*pp*) See p. 75, note (*n*).

XIV. OF PUBLIC TRUSTEE AS SOLE TRUSTEE.

XIV. APPOINTMENT *of the* PUBLIC TRUSTEE *as* SOLE TRUSTEE *of a* SETTLEMENT *in the* PLACE *of* TWO RETIRING TRUSTEES (*q*). (*By* INDORSEMENT.)

THIS INDENTURE (*r*), made the —— day of ——,

Parties. BETWEEN the within named [*appointor*], [now of, &c.], of the first part; the within named [*retiring trustees*], of, &c., of the second part; and the Public Trustee, of the third part.

Recitals: of present state of trust property; WHEREAS the property subject to the trusts of the within written indenture now consists of £—— Two and a Half per Cent. Consolidated Stock standing in the names of the [*retiring trustees*].

of desire of trustees to retire, &c.; AND WHEREAS the said [*retiring trustees*] are desirous of being discharged from the trusts of the within written indenture, and the appointor is desirous of appointing the Public Trustee as sole trustee in their place.

of consent of Public Trustee to act; AND WHEREAS the Public Trustee has consented to act as sole trustee of the within written indenture.

of intention to transfer stock. AND WHEREAS the said £—— Two and a Half per Cent. Consolidated Stock is intended to be forthwith transferred into the name of the Public Trustee.

NOW THIS INDENTURE WITNESSETH:—

Appointment. In exercise of the power for this purpose by [the joint operation of] the within written indenture [and the statute in that behalf] (*s*) given to him, and of every or any other power him enabling, he the said [*appointor*] hereby appoints the Public Trustee to be sole trustee of the within written indenture in the place of the said [*retiring trustees*] (*t*).

[*If the trust comprises other property, add vesting declaration or conveyance, if necessary.*] IN WITNESS, &c.

(*q*) See Public Trustee Act, 1906, s. 5. The consent of the Public Trustee to act must be obtained: *Re Shaw*, [1913] W. N. 141. See sect. 2 for his duties and powers. He cannot be appointed if the instrument creating the trust contains a direction to the contrary, unless the Court otherwise order: see P. T. A. 1906, s. 5 (3). The Public Trustee cannot accept a trust which is solely for religious or charitable purposes: see P. T. A. 1906, s. 2. Notice of the proposed appointment must be given to the beneficiaries, and the Court may make an order prohibiting the appointment where it considers it expedient to do so: see P. T. A. 1906, s. 5 (4); *Re Firth*, [1912] 1 Ch. 806. See also Preliminary Note, *ante*, p. 70.

(*r*) Stamp, 10*s*., with further 10*s*. where there is a vesting declaration or conveyance of property. See, as to adjudication, *ante*, p. 69.

(*s*) In this case it is supposed that the settlement contained a power to appoint new trustees, hence the reference to the joint operation of the settlement and the statute.

(*t*) The Public Trustee Act, s. 5 (1), expressly provides that though the

XV. APPOINTMENT *of the* PUBLIC TRUSTEE *as* CUSTODIAN TRUSTEE (*u*).

THIS INDENTURE (*x*), made the —— day of ——, 19—, BETWEEN [*managing trustees*], of, &c., of the first part; [*beneficiary* (*y*)], of, &c., of the second part; and the Public Trustee of the third part. Parties.

WHEREAS by his will, dated, &c. [*testator*], of, &c., after making certain pecuniary and specific bequests, devised and bequeathed the residue of his real and personal property to [*trustees*] upon trust for sale and conversion, and investment of the proceeds as therein mentioned, and to stand possessed of such investments upon trust to pay the income thereof to the said [*beneficiary*] during his life, and after his death as to as well the capital as the income of the said trust premises upon the trusts therein mentioned. Recitals: of will;

AND WHEREAS [*recite death of testator and probate,* ante, *p.* 85].

AND WHEREAS the said [*beneficiary*] is desirous that the Public Trustee should have the custody of all securities and documents of title relating to the trust property and investments now subject of desire to appoint custodian trustee;

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trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee, and it seems that he may be so appointed even where the settlement provides that the trustees should not at any time be less than three: see *Re Leslie,* [1911] 1 Ch. 611; followed in *Re Ardagh's Estate,* [1914] 1 I. R. 5.

(*u*) The Public Trustee is a corporation sole having an official seal (Public Trustee Act, 1906, s. 1), and holds a licence in mortmain, dated January 1, 1908. Upon his appointment as custodian trustee the trust property must be transferred to him, and if necessary, vesting orders must be made under the T. A. 1893. As to the respective powers of the custodian trustee and the managing trustees, see sect. 4 (2) of the P. T. A. 1906. It is doubtful whether the "vesting declaration" under sect. 12 of T. Act, 1893, applies to the appointment of custodian trustees. As to the appointment of banking or insurance companies or other corporate bodies as custodian trustee, see P. T. A. 1906, s. 4 (3), and P. T. Rules, 1912, set out, [1912] W. N. Pt. 2, p. 173; and as to a charitable trust, see *Re Cherry's Trust,* [1914] 1 Ch. 83; 83 L. J. (Ch.) 142.

(*x*) Stamp, 10*s.* for appointment and further 10*s.* for conveyance, if any; but in the latter case the stamp must be adjudicated: see *ante,* p. 69.

(*y*) The appointment can be made (1) by the Court, (2) by the settlor or testator on creation of the trust, or (3) by the persons having power to appoint new trustees: see P. T. A. s. 4 (1). The concurrence of beneficiaries is not necessary. The appointment can be made though no vacancy has occurred in the trusteeship: *Re Cherry,* [1914] 1 Ch. 83.

XV. OF PUBLIC TRUSTEE AS CUSTODIAN TRUSTEE.

to the trusts of the said will; and the [*managing trustees*] have agreed, while retaining the management of the said trust property and investments, to appoint the Public Trustee to act as custodian trustee of the said securities and documents of title which the Public Trustee has agreed to do.

of delivery of securities to Public Trustee.

AND WHEREAS the said [*managing trustees*] have already handed over to the Public Trustee the securities and documents of title specified in the [first part of the] schedule hereto, and the same are now in his custody, as he hereby admits [and have agreed to hand over the documents of title specified in the second part of the schedule hereto as and when the same shall come into their possession].

NOW THIS INDENTURE WITNESSETH as follows:—

Appointment of Public Trustee as custodian trustee.

1. The said [*managing trustees*], with the approval (hereby testified) of the said [*beneficiary*], in exercise of the power for this purpose vested in them by [the said will and] the statute in that behalf, and of every other power them enabling, hereby appoint the Public Trustee to be the custodian trustee of the said securities and documents of title mentioned in [the first part of] the schedule hereto [and of the securities and documents of title mentioned in the second part of the said schedule as and when the same shall be in the possession or power of the said [*managing trustees*]] and of all other securities and documents of title which may at any time hereafter be comprised in or form part of the said trust premises.

2. [*Conveyance to the Public Trustee by* "the managing trustees as trustees," *of any property that can be conveniently so conveyed*] (*z*).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*z*) By sect. 4 (2) (a) of the Public Trustee Act, 1906, the trust property is to be transferred to the "custodian trustee" as if he were a sole trustee; but the management of the property and the exercise of powers or discretions is to remain vested in the "managing trustees": sect. 4 (2) (b). The custodian trustee is to have the custody of the securities and title deeds: sect. 4 (2) (c). The power of appointing new trustees is exercisable by the "managing trustees": sect. 4 (2) (f); and in determining the number of trustees for the purposes of the T. A. 1893, "the custodian trustee" is not to be reckoned: sect. 4 (2) (g). As to the termination of the trusteeship of the custodian trustee by order of the Court, see P. T. A. 1906, s. 4 (2) (i).

APPRENTICESHIP.

PRELIMINARY NOTE.

Stamps.

An instrument of apprenticeship bears a 2*s.* 6*d.* stamp, except in the case of "parish" or "charity" apprenticeships, which are exempted from duty. (See Stamp Act, 1891, Sched., tit. "Apprenticeship," and s. 25; see also Merchant Shipping Act, 1894, s. 108.)

Law as to apprenticeships.

Formerly, apprenticeship contracts had to be made by deed for a period of seven years at least (5 Eliz. c. 4), but by 54 Geo. 3, c. 96, the requirement of seven years is repealed, and an agreement in writing is made valid and effectual, except in special cases in which it is otherwise provided by statute. (See *Kirkby* v. *Taylor*, [1910] 1 K. B. at p. 534.)

No action lies against the apprentice upon his covenants during the apprenticeship (see *Gylbert* v. *Fletcher*, Cro. Car. 179; *Gadd* v. *Thompson*, [1911] 1 K. B. 304), but an infant may bind himself to pay, at a future date, a fair and reasonable premium for instruction. (*Walter* v. *Everard*, [1891] 2 Q. B. 369; *Gadd* v. *Thompson*, *supra*.) And a stipulation by the infant to do or not to do some act as deferred consideration for instruction will, if reasonable, be binding on the infant, and a negative stipulation of this kind may be enforced after the determination of the apprenticeship. Unreasonable provisions cannot be enforced against the infant or his parent. As to what is "reasonable," the same rule applies as well to apprenticeship deeds as to other contracts of service by infants. As to which, see *De Francesco* v. *Barnum*, 45 Ch. D. at p. 439; *Gadd* v. *Thompson*, *supra*, at p. 309. As to misconduct of apprentice affecting the master's covenant, see *Learoyd* v. *Brook*, [1891] 1 Q. B. 431.

An apprenticeship to a corporation is good. (See *Burnley, &c. Society* v. *Casson*, [1891] 1 Q. B. 75.)

See further, as to the law of apprenticeship, Simpson on Infants, 3rd ed., pp. 80—86; and Austin on Apprentices.

I. TO TRADER.

PRECEDENTS.

I. ARTICLES *of* APPRENTICESHIP *to a* TRADER. (SHORT FORM.)

Parties.

THIS INDENTURE (*a*), made the —— day of ——, 19—, BETWEEN [*apprentice*], of, &c., of the first part; [*father of apprentice*], of, &c., of the second part; and [*master*], of, &c., of the third part; WITNESSETH that the said [*apprentice*], of his own free will, and with the consent of his father, the said [*father*], hereby binds himself as apprentice to the said [*master*] during the term of —— years, to learn the trade and business of ——; AND the said [*father*] hereby covenants with the said [*master*] that, during the said term, the said [*apprentice*] shall honestly, faithfully, and diligently serve and obey the said [*master*], and shall not do or commit, or suffer to be done or committed, any waste, damage, or injury of or to the property of the said [*master*], and shall not unlawfully absent himself from the service of the said [*master*]; AND FURTHER, that he, the said [*father*], will, at his own expense, provide the said apprentice with good and sufficient clothes, washing, medicines and medical attendance, and other necessaries, except as is hereinafter otherwise stipulated, during the said term: IN CONSIDERATION whereof, and also in consideration of the premium or sum of £—— (*b*) now paid to the said [*master*] by the said [*father*] (the receipt whereof is hereby acknowledged), the said [*master*] hereby covenants with the said [*father*], and also with the said [*apprentice*], that he, the said [*master*], will during the said term take and receive as his apprentice, and to the best of his knowledge and ability teach and instruct in the trade and business of a ——, and all things incident thereto, the said [*apprentice*], in such manner as he, the said [*master*], now does or shall hereafter use or practise the same; and will also during the said term provide the said [*apprentice*] with good and sufficient board and lodging; and will also, from and after the

Apprentice binds himself.

Covenants by father.

Covenants by master to instruct.

To provide board, &c.

(*a*) Stamp, 2*s.* 6*d.*

(*b*) If the whole of the premium is not paid at once, the parent or some relative of the apprentice should covenant to pay the balance. Otherwise the burden would lie on the master to show that the arrangement was proper and the premium reasonable, and that instruction had been given under the deed: see *Walter* v. *Everard,* [1891] 2 Q. B. 369.

expiration of the first year of the said term, pay to the said [*apprentice*] wages at the rates and in manner following, that is to say, during the second year of the said term the sum of —— per week [*or*, month], and during the third year of the said term the sum of —— per week [*or*, month], and during the remainder of the said term the sum of —— per week [*or*, month]; and will, on the completion of the said term, if the said [*apprentice*] shall in the meantime have faithfully and diligently served his apprenticeship and in all respects properly conducted himself, indorse on these presents a certificate that the said [*apprentice*] has duly served his apprenticeship in due conformity to these presents, and deliver the same so indorsed to the said apprentice.

To pay wages.

To endorse certificate of service.

In witness, &c.

II. ARTICLES *of* Apprenticeship *to* Sea Service (*c*).

THIS INDENTURE (*d*), made the —— day of ——, 19—, Between [*apprentice*], of ——, in the county of —— (hereinafter called "the apprentice"), of the one part, and [*master*], of ——, in the county of —— (hereinafter called "the master"), of the other part; Whereas the apprentice attained the age of —— years on the —— day of —— now last past: NOW THIS INDENTURE WITNESSETH that the apprentice, of his own free will, places and binds himself to the master during the term of —— years from the date of these presents, and hereby covenants with the master that during the said term he will honestly, faithfully, and diligently serve the master and such other person or persons in the navigation of any ship or vessel as the master shall direct and appoint, and will obey his and their lawful commands on board any ship or vessel in or to which he shall be ordered by him or them to go, and will, when required, render to the master and such person or persons as aforesaid, true accounts of all goods, merchandise, and moneys belonging to the master, which shall be committed to the charge of or come into the hands of the apprentice: And that he, the apprentice, will not do or

Apprentice binds himself.

(*c*) See sects. 105—109 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), which contain provisions with regard to apprentices to the sea service.

Sea service.

(*d*) Indentures of apprenticeship to sea service are exempt from stamp duty under the Merchant Shipping Act, 1894.

II. TO SEA SERVICE.

willingly suffer to be done by others any hurt, prejudice, or damage to the goods, merchandise, or other property or affairs of the master, or of any such person or persons as aforesaid, but will, to the utmost of his power, hinder and prevent the same, and immediately give to him or them notice thereof; AND will not, without leave, absent himself from his service, nor frequent taverns, nor play at unlawful games, but will in all respects behave and demean himself as a good and faithful apprentice towards the master and such other person or persons as aforesaid:

Covenants by master.

IN CONSIDERATION WHEREOF the master covenants with the apprentice, that during the said term he, the master, will teach, or cause to be taught, the apprentice in the art, business and duties of a seaman, and will find and provide the apprentice with sufficient food, drink, washing, medicine and medical and surgical aid and attendance, and also all sea bedding and wearing apparel, both woollen and linen, and other necessaries, and will after expiration of the first year [*or*, "of the first —— years"] of the said term pay to the apprentice wages at the rates and in manner following, &c. [*Ante*, p. 103.]

IN WITNESS, &c.

III. ARTICLES *of* APPRENTICESHIP *to a* MERCHANT, *with* SPECIAL PROVISIONS.

THIS INDENTURE (*e*), made the —— day of ——, 19—,

Parties.

BETWEEN [*apprentice*], of, &c. (hereinafter called "the apprentice"), of the first part; [*father*], of, &c., the father of the said [*apprentice*] (hereinafter called "the father"), of the second part; and [*master*], of, &c., carrying on the trade or business of —— at —— (hereinafter called "the master"), of the third part:

Testatum.

WITNESSETH, and it is hereby agreed and declared, and the father, so far as relates to the acts and stipulations on the part of himself and of the apprentice to be performed and observed, covenants with the master, and the master, so far as relates to the acts and stipulations on his part to be performed and observed, covenants with the father, and also separately with the apprentice, as follows, that is to say:—

Apprentice binds himself.

1. The apprentice, of his own free will and accord, and with

(*e*) Stamp, 2*s*. 6*d*.

the consent of the father, hereby binds himself as apprentice to the master, from the date of these presents for the term of —— years, to learn the trade or business of ——.

Covenants by father that apprentice will serve,

2. The apprentice will, during the said term, well and truly serve the master, as apprentice in the trade or business aforesaid, at such place or places, either within the United Kingdom or elsewhere (*f*), as the master shall direct and appoint, and will diligently attend to the business and concerns of the master.

and not absent himself;

3. The apprentice will not, without permission, absent himself from the service of the master, nor do or commit any damage or waste to the master or his concerns, nor knowingly suffer the same to be done by others, if within his power to prevent it, nor without forthwith giving notice thereof to the master.

will assist in conducting master's business;

4. The apprentice will, during the said term, receive and take into his care and custody all such goods and merchandise and other articles of every description as shall be consigned or sent to him by or for the use or on account of the master, and will sell and dispose of the same to the best possible profit, for the benefit of the master. And also will, at all times during the said term, follow and perform the advice, direction, and orders of the master, which shall by letters or otherwise be sent, given, or made known to him, the apprentice, concerning such goods, merchandise, and articles as aforesaid.

will keep books of accounts;

5. The apprentice will, at the cost of the master, provide and keep in good order books of account concerning such his employment as aforesaid, according to the custom of merchants in such cases; And will deal justly, truly, and faithfully with the master, in all and every his accounts, reckonings, bargains and dealings relating to and concerning his said employment, and will, from time to time, as occasion shall arise, send to the master true accounts of all the business and dealings of him, the apprentice, and letters of advice of all such measures and occurrences wherewith it shall be proper that the master shall be acquainted, and will return to —— aforesaid, if employed away therefrom, whenever thereunto required by the master, by letter or otherwise, with all his accounts and reckonings duly made up and in proper order.

(*f*) As to change of locality of business, see *Eaton* v. *Western*, 9 Q. B. D. 636; and as to the meaning of "serving," see *Richardson* v. *Colne Fishery Co.*, 77 L. T. 501.

III. TO MERCHANT.

will deliver accounts.

6. The apprentice will, from time to time, when requested so to do, produce and show to the master all his books of account concerning all such dealings as aforesaid, and make and give to the master a just and perfect account and reckoning of and concerning all and every such goods, merchandise and other articles and moneys which shall come into his hands for or on behalf of the master. And, moreover, will, within —— days after every such account as aforesaid shall have been sent to the master, deliver and pay to the master all and every such goods, merchandise and other articles and moneys as by such account shall be shown to be due from the apprentice to the master.

Covenant by father to provide necessaries.

7. The father will at his own cost provide the apprentice during the said term with sufficient and suitable clothes and apparel, and also with medicine and medical attendance and other necessaries, except as is hereinafter mentioned (*g*).

Covenants by master to take apprentice;

8. In consideration of the service of the apprentice and of the covenants and stipulations on his part and on the part of the father to be observed and performed, and also in consideration of the premium or sum of £—— now paid by the father to the master (the receipt, &c.), the master agrees to take and accept the apprentice as his apprentice during the said term, and to employ him not only at —— aforesaid, but also at other places in the United Kingdom and abroad where the master now has or shall hereafter during the said term have dealings.

to employ and instruct apprentice;

9. The master will employ and instruct the apprentice, or cause him to be employed or instructed, in the said trade or business of ——, and in all matters incident thereto, to the best of his skill, knowledge and ability.

to provide board and lodging, or allowance in lieu thereof;

10. The master will either provide the apprentice with good and sufficient board and lodging in the house of him, the master, in a similar manner with his own family, and so that the apprentice shall at all times take his meals at the table with, and at the same time as, the master and his family; or will, if and whenever the apprentice shall be absent from —— aforesaid on the business of the master, and at any other times if the master shall so think proper, pay or allow to the apprentice during the said term or any part thereof the sum of £—— per month in lieu and full satisfaction of the board and lodging of the apprentice.

(*g*) As to the master's liability to provide medical attendance in the absence of stipulation, see *Reg.* v. *Smith*, 8 C. & P. 153.

To pay expenses of journeys, &c.:

11. The master will also at all times during the said term pay all the expenses of and incident to any journeys which the apprentice shall make to any place or places in the United Kingdom or elsewhere, on the business and by the direction or with the sanction of the master.

to pay wages.

12. From and after the expiration of the second year of the said term the master shall pay to the apprentice wages at the rates and in manner following, that is to say, during the third year of the said term, &c. [*as agreed*].

Apprentice may terminate contract by notice.

13. The apprentice shall be at liberty, upon giving to the master —— weeks' notice in writing of his intention so to do, to leave the service of the master at the expiration of the —th year of the said term, and to use and employ the remaining year of his apprenticeship to his own benefit and advantage, where and as he shall think fit, without let or hindrance from or by the master, but so nevertheless that during the said remaining year the apprentice shall not in that case be entitled to any board or lodging, or allowance or payment in lieu or satisfaction thereof respectively, or to any wages from or at the cost of the master, and that the master shall not be entitled to any gains or earnings made by the apprentice during that year.

Provision in case of death of apprentice.

[14. If the apprentice shall die within —— calendar months from the date hereof [or shall within that time be incapacitated by failure of health from following the said trade or business, such incapacity being certified by two qualified medical practitioners (*h*)] the master shall repay to the father the sum of £——, part of the said premium or sum of £——.]

Provision in case of death of master (*i*).

15. If the master shall die before the expiration of the apprenticeship, his executors or administrators shall, as soon as may be after his death, find another suitable master for the apprentice following the trade or business of ——, and at their own cost assign over and bind the apprentice to such new master for the then residue of the term of his said apprenticeship upon the same terms, or upon terms equally advantageous to the apprentice, as

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(*h*) See *Derby* v. *Humber*, L. R. 2 C. P. 247.

(*i*) In the absence of agreement the premium cannot be recovered on the master's death: see *Whincup* v. *Hughes*, L. R. 6 C. P. 78; *Ferns* v. *Carr*, 28 Ch. D. 409. In the case of the bankruptcy of the master the apprentice has a preferential claim to payment under sect. 34 of the Bankruptcy Act, 1914.

III. TO MERCHANT.

those herein contained: And in default thereof shall pay to the father the sum of £—— for every year, and a proportionate sum for any fraction of a year of the said term, which shall remain unexpired at the death of the master.

Dismissal for misconduct (*j*).

16. In the event of wilful disobedience by the apprentice to the lawful and reasonable commands of the master, or in case the apprentice shall otherwise grossly misconduct himself, the master may discharge the apprentice from his service; but in such case he shall repay to the father the sum of £—— for every year, and a proportionate sum for any fraction of a year of the said term then remaining unexpired.

In witness, &c.

IV. ARTICLES *of* Clerkship *to a* Solicitor (*k*).

THIS INDENTURE, made the —— day of ——, 19—, Between [*clerk*], of, &c., of the first part; [*father of clerk*], of, &c., of the second part; and [*solicitor*], of, &c., a solicitor of the Supreme Court, of the third part, WITNESSETH as follows:—

Clerk binds himself.

1. The said [*clerk*], of his own free will, and with the consent of the said [*father*], hereby places and binds himself clerk to the said [*solicitor*], to serve him from the day of the date hereof, for the full term of five years.

Covenants by father.

2. The said [*father*] hereby covenants with the said [*solicitor*] (a) that the said [*clerk*] will faithfully and diligently serve the said [*solicitor*], as his clerk, in the profession of a solicitor, during the said term; and that the said [*clerk*] will not, at any time during such term, cancel, obliterate, spoil, destroy, waste, embezzle, spend or make away with any of the books, papers, writings, moneys, stamps, chattels or other property of the said

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(*j*) See *Westwick* v. *Theodor*, L. R. 10 Q. B. 224.

(*k*) The stamp will be 80*l*.: see Stamp Act, 1891, "Articles of Clerkship," and sects. 26, 27. The stamp must be affixed before execution. As to articles of clerkship to a solicitor, see 6 & 7 Vict. c. 73, ss. 3, 4, 5, 6, 12, and 13. See also 23 & 24 Vict. c. 127, ss. 2—6, 15, 32; 40 & 41 Vict. c. 25; 51 & 52 Vict. c. 65. As to Ireland, see Solicitors (Ireland) Act, 1898. As to enrolling articles *nunc pro tunc*, see *Ex parte Darville*, L. R. 2 C. P. 244; *Re Sayer*, L. R. 10 C. P. 569; and *Ex parte Banyard*, *ibid.* 638. As to bankruptcy of the solicitor, see Bankruptcy Act, 1914, s. 34. As to return of premium, see *Ferns* v. *Carr*, 28 Ch. D. 409.

[*solicitor*], his executors, administrators or assigns, or of any firm of which the said [*solicitor*] is or may be a member, or any of his or their clients or employers, which shall be deposited in his or their hands, or entrusted to his or their custody or possession, or which shall come into the care or possession of the said [*clerk*], and that in case the said [*clerk*] shall act contrary to the covenant lastly hereinbefore contained, or if he the said [*solicitor*], his executors, administrators or assigns, or any such firm as aforesaid, or any partner thereof, shall sustain or suffer any loss, damage or prejudice by the misbehaviour, neglect or improper conduct of the said [*clerk*], the said [*father*], his executors or administrators, will indemnify the said [*solicitor*], his executors and administrators, and any such firm or partner as aforesaid, and make good and refund to him or them the amount or value thereof; (b) that the said [*clerk*] will, from time to time, and at all times, during the said term, keep the secrets of the said [*solicitor*], and any such firm as aforesaid, and of every partner therein, and readily and cheerfully obey and execute his or their lawful and reasonable commands, and will not depart or absent himself from the service or employ of the said [*solicitor*], at any time during the said term, without his consent first obtained, but will from time to time, and at all times during the said term, conduct himself with all due diligence, honesty and propriety (*l*).

Covenants by solicitor.

3 In consideration of the premises, and also of the sum of £—— by the said [*father*] to the said [*solicitor*] paid at or before the execution of these presents (the receipt whereof the said [*solicitor*] hereby acknowledges), the said [*solicitor*] covenants with the said [*father*] that the said [*solicitor*] will accept and take the said [*clerk*] as his clerk, and also that the said [*solicitor*] will, by the best ways and means he may or can, and to the utmost of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the said [*clerk*] in the practice or profession of a solicitor of the Supreme Court, which he the said [*solicitor*] now does, or shall at any time hereafter, during the said term, use or

(*l*) A covenant may be added prohibiting the clerk after the expiration of the term from acting for clients of the master's firm: see *Reid* v. *Burrows*, [1892] 2 Ch. 413; but such a covenant must be "reasonable": see *Lewis* v. *Durnford*, 24 L. T. R. 64; and as to the effect of a covenant not to practise, see *Sewell* v. *Wright*, 50 Sol. J. 223; and *Robertson* v. *Willmot*, [1909] W. N. 155.

IV. TO SOLICITOR.

practise, and also will, at the expiration of the said term, use his best means and endeavours at the request, costs and charges of the said [*clerk*], to cause and procure him the said [*clerk*] to be admitted a solicitor of the said Supreme Court; Provided that the said [*clerk*] shall have faithfully and diligently served his intended clerkship, and passed the required examinations, and duly qualified himself in all other respects to be admitted to practise as a solicitor.

[4. In case the said [*solicitor*] shall retire from practice or die within the said term of five years, the said [*solicitor*], his executors or administrators, shall within one month after such retirement or death pay to such solicitor or solicitors as shall accept the said [*clerk*] as his or their clerk for the residue of the said term, if such death or retirement happens within the first year of the term, £——; if between the first and the expiration of the second year, £——; if between the second and the expiration of the third year, £——, &c.] (*m*).

IN WITNESS, &c.

V. ASSIGNMENT *of* INDENTURE *of* APPRENTICESHIP. (*By* INDORSEMENT) (*n*).

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN the within named [*master*], of the first part; the within named [*apprentice*], of the second part; the within named [*father of apprentice*], of the third part; and [*new master*], of, &c., of the fourth part, WITNESSETH that in consideration of the sum

Assignment of apprenticeship.

of £—— paid by the said [*old master*] to the said [*new master*], the said [*old master*], with the consent of the said [*apprentice*], and at the request of the said [*father*], hereby assigns unto the said [*new master*], the within written indenture of apprenticeship, and all the benefit thereof, and all the right, interest, claim and demand of the said [*old master*] thereunder: TO HOLD the same for the residue now unexpired of the within mentioned term of

Covenants by father with new master.

years: AND the said [*father*] hereby covenants with the said [*new master*] that the said [*apprentice*] shall faithfully, diligently and

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(*m*) See 6 & 7 Vict. c. 73, s. 13; and *Ex parte Williamson*, 4 Ch. D. 581.

(*n*) Articles of clerkship to a solicitor are not assignable: see *Ex parte Adams*, 4 Ch. D. 39. It would seem that this deed will bear a stamp of 2*s.* 6*d.*: see Stamp Act, 1891, s. 25.

V. ASSIGNMENT OF INDENTURE.

honestly serve the said [*new master*] as his apprentice during the residue of the said term, and that he the said [*father*] will perform and observe all the covenants on his part contained in the within written indenture in as full and perfect a manner as if they were herein repeated and entered into with the said [*new master*]: And the said [*new master*] hereby covenants with the said [*father*] and with the said [*old master*] that he the said [*new master*] will, during the remainder of the said term, to the utmost of his skill and knowledge, instruct the said [*apprentice*] in the trade or business of a ——, which he the said [*new master*] now doth or shall hereafter practise, and will perform and observe all the covenants on the part of the said [*old master*] contained in the within written indenture so far as the same remain to be performed and observed in as full a manner as if they were herein repeated and entered into by the said [*new master*], and will keep the said [*old master*] indemnified from the same, and all actions, claims and demands in respect thereof.

Covenants by new master.

In witness, &c.

ARBITRATION.

PRELIMINARY NOTE.

Under the Arbitration Act, 1889, which supersedes the previous statutory provisions as to arbitration, every submission to arbitration is, in the absence of a contrary intention expressed therein, irrevocable, except by leave of the Court or a judge, and is to have the same effect as if made an order of the Court. (Sect. 1.) (See *Smith & Service*, 25 Q. B. D. 545.)

By sect. 2 certain provisions contained in the first schedule to this Act as to the number of arbitrators, the time for making the award, the examination of parties, and the production of documents, and as to the award being final, and placing the costs of the reference and award, &c. under the direction of the arbitrators (see *Re Stephens*, 36 Sol. J. 465; *Re Prebble*, [1892] 2 Q. B. 602), are to be deemed to be included in every submission unless a contrary intention is expressed therein.

Sect. 3 provides for references to an official referee.

Sect. 4 empowers any Court (including a County Court) or a judge to stay legal proceedings by one party to a submission against the other party after appearance and before delivery of pleadings or taking any other step in the proceedings. (*Ochs* v. *Ochs Brothers*, [1909] 2 Ch. 121; *Cohen* v. *Arthur*, 56 Sol. J. 344.) As to when the Court will or will not stay proceedings, see *Barnes* v. *Youngs*, [1898] 1 Ch. 414; *Re Carlisle*, 44 Ch. D. 200; *Farrar* v. *Cooper*, *ibid.* 323; *Bonnin* v. *Neame*, [1910] 1 Ch. 732; *S. Freeman & Sons* v. *Chester R. Council*, [1911] 1 K. B. 783; *Printing, &c. Co.* v. *Linotype, Limited*, [1912] 1 Ch. 566; and as to when the reference will be enforced by the Court, *Renshaw* v. *Queen Anne's, &c. Co.*, [1897] 1 Q. B. 662; *Parry* v. *Liverpool Malt Co.*, [1900] 1 Q. B. 339.

Sect. 5 empowers the Court in certain cases to appoint arbitrators. (See *Re Wilson and Eastern Counties, &c. Co.*, [1892] 1 Q. B. 81; *Re Eyre and Leicester Corp.*, *ibid.* 136; *Taylor* v. *Denny*, [1912] A. C. 666.

Sect. 6 provides for the appointment of another arbitrator by the acting arbitrator in the case of either of two appointed arbitrators refusing to act, or being incapable, or dying, and, in the case of one party failing to appoint an arbitrator for seven days after notice to make the appointment given by the other party, for the appointment of the appointee of the latter as sole arbitrator, unless the submission expresses a contrary intention.

Sect. 7 empowers arbitrators (a) to administer oaths or take affirmations, (b) to state an award in the form of a case for the opinion of the Court, and (c) to correct clerical errors in awards.

The rest of the Act contains auxiliary provisions.

As to "submission" (defined by sect. 27), see *Austrian-Lloyd Steamship Co.* v. *Gresham Life Assurance Society*, [1903] 1 K. B. 249.

As to stating a case for the opinion of the Court (sect. 19), see *Re Spillers and Baker, &c.*, [1897] 1 Q. B. 312; *Re Palmer and Hosken*, [1898] 1 Q. B. 131.

As to arbitrations under London Building Act, 1894, see *Re Stone and Hastie*, [1903] 2 K. B. 463; *Leadbetter* v. *Marylebone Corp.*, [1904] 2 K. B. 893; *Adams* v. *Marylebone Borough Council*, [1907] 2 K. B. 822.

Arbitrations under the Agricultural Holdings Act, 1908, must be made (sect. 13 (1)) by one arbitrator, in accordance with the

provisions contained in the second schedule to the Act. Subsect. 4 provides that the Arbitration Act, 1889, shall not apply to arbitrations under the Agricultural Holdings Act. For forms of proceedings, see the rules prescribed under that Act, in the schedule to which a form of award is given.

See further as to arbitration, the notes in Key & Elph., 10th ed., Vol. I., pp. 175 *et seq.*

Mere appointments of arbitrators or umpires, and notices in pursuance of a reference, do not require stamps.

PRECEDENTS.

I. AGREEMENT *on a* PURCHASE, *between the* VENDOR *and the* PURCHASER, *to refer to* ONE ARBITRATOR *all* DISPUTES *existing or which may arise before the* LAST TEN DAYS *preceding the* ARBITRATOR'S FIRST SITTING. VARIATIONS *for* REFERENCE *to* TWO ARBITRATORS *and their* UMPIRE (*a*).

AN AGREEMENT (*b*), made the —— day of ——, BETWEEN [*vendor*], of, &c., of the one part; and [*purchaser*], of, &c., of the other part. WHEREAS by an agreement, dated, &c. [*recite agreement for purchase, &c.*]. AND WHEREAS disputes and differences exist between the said [*vendor*] and the said [*purchaser*], respecting the said agreement, and otherwise relating to the premises. NOW IT IS HEREBY AGREED, as follows:—

Recital of agreement.

That disputes exist between the parties.

1. All disputes (*c*) and differences which exist between the said parties respectively, or either of them; and also all other disputes and differences that may so exist at any time or times, before the last ten days immediately preceding the day which shall be appointed by the arbitrator [arbitrators] hereinafter

Disputes to be referred.

(*a*) Under the First Schedule to the Arbitration Act, 1889, (a) if no other mode of reference is provided the reference shall be to a single arbitrator; (b) if the reference is to two arbitrators, they may appoint an umpire at any time within the period for making the award.

(*b*) Stamp, if under hand only, 6*d.*; if under seal, 10*s*. Other forms of submission to arbitration and otherwise relating to arbitration will be found by reference to the "Index to the Precedents" in each volume of this work.

(*c*) In cases of this kind it is better to make the reference general, as above.

I. TO REFER TO ONE ARBITRATOR.

named, for the first sitting in the arbitration, or any matters and things relating thereto, or arising out of the said agreement, shall be referred to the arbitration of [A. B.], of, &c. [*or*, A. B., of, &c. (nominated by the said [*vendor*]), and C. D., of, &c. (nominated by the said [*purchaser*]), or in case they shall disagree, then, as regards the matter or matters as to which such disagreement shall exist, to the umpirage of E. F., of, &c. [*or*, "of such person as they shall in writing appoint as umpire"]].

Power for arbitrator to make plans and employ surveyor, &c.;

2. The said arbitrator [arbitrators or their umpire] may make or cause to be made plans of the lands, houses, buildings, and premises comprised in the said agreement, and to employ a surveyor or other person to survey, measure, or value the same at the expense of the parties, to be borne and paid as between them as the said arbitrator [arbitrators or their umpire] shall direct.

to direct parties, to execute deeds, &c.;

3. The said arbitrator [arbitrators or their umpire] shall have full power to award and direct that the parties respectively, or their respective heirs, executors, administrators or assigns, shall execute and do such conveyances, assurances, releases or other instruments or things as the said arbitrator [arbitrators or their umpire] shall think proper, and the same shall be executed and done accordingly.

to take the opinion of counsel.

4. The said arbitrator [arbitrators or their umpire] may take the opinion of counsel upon any question arising in the reference, and may state a case for this purpose, and direct how the costs thereof are to be borne.

Statement of matters intended to be referred.

5. The solicitor of each of the said parties shall state in writing all the matters and things intended to be referred by his client to the arbitrator [arbitrators], and shall, at least ten days before the day appointed by the arbitrator [arbitrators] for the first sitting on the arbitration, deliver a copy of such statement to the solicitor of each of the other parties respectively; and only those matters and things which shall be comprehended in such respective statements shall be taken into consideration by the arbitrator.

6. This shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being, the provisions whereof shall so far as applicable apply to this reference.

IN WITNESS, &c.

II. AGREEMENT *to refer to* THREE ARBITRATORS MATTERS *of* ACCOUNT *between a* CREDITOR *and* TWO DEBTORS, *where a* BALANCE *is admitted to be* DUE; AGREEMENT *to* SUSPEND *an* ACTION (*d*).

II. TO REFER TO THREE ARBITRATORS.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN E. F., of, &c., of the first part; A. B., of, &c., of the second part; and C. D., of, &c., of the third part.

Recital of dealings between parties;

WHEREAS there have been divers dealings and transactions between the above-named E. F. and A. B., before and since the —— day of ——, on which day there was due and owing from the said A. B. to the said E. F. the sum of £——; and there have been also divers dealings and transactions between the said E. F. and the said A. B. and C. D., since the said —— day of ——; and several questions, disputes, and controversies have arisen, and are subsisting, not only between the said E. F. and the said A. B., but also between the said E. F. and the said A. B. and C. D.: AND WHEREAS there is now pending in the King's Bench Division of the High Court of Justice an action, wherein the said E. F. is plaintiff, and the said A. B. and C. D. are defendants; and also an action in the Chancery Division of the same Court, in which the said A. B. and C. D. are plaintiffs and the said E. F. is defendant, touching the said dealings and transactions, and the accounts relating thereto, in which last mentioned action the said E. F. has filed a counter-claim against the said A. B. and C. D. NOW IT IS HEREBY AGREED by and among the said E. F., A. B., and C. D. as follows, that is to say:—

of disputes, and questions between the parties, and of two pending actions.

Agreement to refer.

1. All questions, disputes, and controversies, in anywise relating to or concerning such dealings or transactions, as well between the said E. F. and the said A. B. as between the said E. F. and the said A. B. and C. D., and the accounts relating thereto shall be referred to the award and determination of [*arbitrator*], of, &c., [*arbitrator*], of, &c., and [*arbitrator*], of, &c., or any two of them. AND this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force.

Arbitrators may investigate accounts,

2. Notwithstanding the bond referred to in the statement of claim in the last mentioned action, the arbitrators are to be at

(*d*) Stamp, 6*d*., if under hand only; 10*s*., if under seal.

II. TO REFER TO THREE ARBITRATORS.

and award a greater or less sum.

liberty to investigate the whole of the accounts, dealings, and transactions between the parties, and to award a greater or less sum to be due from the said A. B. and C. D., or either of them, jointly or separately, to the said E. F., and to determine the true balances between the said parties, upon the whole of the said accounts, dealings, and transactions, but so that the balance before stated to be due from the said A. B. to the said E. F. on the —— day of —— shall not be questioned; AND to appoint how and in what proportions such balances shall be paid, and by and to whom.

Actions to be discontinued, and dismissed, with or without costs.

3. The arbitrators, or any two of them, shall be at liberty to direct the said actions to be discontinued or dismissed, with or without costs; but if with costs, then to ascertain whether such costs are to be paid as between solicitor and client, or as between party and party; and when, and by and to whom they shall be paid.

Agreement to perform award.

4. The several parties hereto shall well and truly obey and perform the award of the arbitrators, or any two of them, touching and concerning as well the several matters hereinbefore particularly mentioned, as also all other actions, accounts, claims, and demands whatsoever, between or among the parties up to the date hereof; but so that the balance before stated to be due from the said A. B. to the said E. F. on the —— day of —— shall not be questioned; [AND so as the award be made in writing, under the hands of the arbitrators, or any two of them, and ready to be delivered to the parties [or if they or any of them shall be dead before the award shall have been made, to their respective executors or administrators (*e*)], or such of them respectively as shall desire the same, on or before the —— day of —— next].

Date at which award to be made (*f*).

Each party may inspect books, &c.

5. Each of the parties shall in the meantime be at liberty to inspect, peruse, and have copies of all or any of the books, papers, and writings in the hands, custody, or power of the other or others of them the parties respectively, relating to the matters in reference.

Power for arbitrators

6. If either party shall, in the opinion of the arbitrators, or any two of them, without sufficient cause, by non-attendance or

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(*e*) But see, in a case of tort, *Bowker* v. *Evans*, 15 Q. B. D. 565.

(*f*) The First Schedule to the Arbitration Act, 1889, by clauses (c), (d), and (e), makes provisions as to the time within which the arbitrators shall make their award: see *Baring Gould* v. *Sharpington, &c. Syndicate*, [1899] 2 Ch. 80.

II. TO REFER TO THREE ARBITRATORS.

non-production of books, papers, or writings, or otherwise delay or impede, or attempt to delay or impede, the progress of the arbitrators, in making their award (*g*), the arbitrators, or any two of them, shall be at liberty to proceed *ex parte*, after two days' clear notice to the party or parties causing such delay or impediment as aforesaid, to be left at his or their dwelling-house or place of business.

to proceed *ex parte*, after notice to party causing delay.

7. The arbitrators, or any two of them, if they shall think it necessary, shall be at liberty to appoint an accountant to assist them; the expense of such accountant to be paid, one-half by the said E. F., and the other half by the said A. B. and C. D. [*or*, "to be paid and borne as the arbitrators, or any two of them, shall direct"], such accountant to be required to make his solemn declaration, according to the statute, of the truth of the account or statement to be made out by him.

Arbitrators may employ an accountant.

8. All proceedings in the said actions shall be stayed until the —— day of —— next, when, if no award shall be made, and the time for making the same shall not be enlarged by consent, the several parties shall be at liberty to proceed as they respectively shall be advised.

Stay of proceedings.

9. The expenses of the arbitration and award shall be paid, one half by the said E. F. and the other half by the said A. B. and C. D. [*or*, "The costs and expenses of and incidental to the preparation of these presents and a duplicate hereof, and all costs and charges attending the arbitration and award, shall be at the discretion of the arbitrators, who may direct such costs to be paid as between party and party or as between solicitor and client, as they shall think fit"].

Expenses of arbitration (*h*).

In witness, &c. (*i*).

(*g*) The arbitrators have power under clause (f) of the Schedule to the Arbitration Act, 1889, to examine parties and require the production of "books, deeds, papers, accounts, writings, and documents." And by clause (g) the examination may be on oath or affirmation.

(*h*) The costs of the reference award are by clause (i) of the First Schedule to the 1889 Act to be in the discretion of the arbitrators or umpire (*Re Stephens*, 36 Sol. J. 464; *Re Prebble*, [1892] 2 Q. B. 602), unless the agreement excludes this discretion: *Fitzsimmons* v. *Mostyn*, [1904] A. C. 46.

(*i*) For a form of award under this submission, see *post*, Precedent XVI., p. 127.

III. BY BOND.

III. SUBMISSION *by* BOND *from one to one* (*k*), *in the* COMMON FORM.

Common obligation from one to one.

KNOW ALL MEN that I [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of [*penalty*]. For which payment I bind myself (*l*) by these presents. Sealed with my seal. Dated this —— day of ——, 19—.

A general condition of a common arbitration bond.

THE CONDITION of the above written bond is such that if the said [*obligor*], his heirs, executors, and administrators, shall in all things well and truly obey, abide by, and perform the award and final determination of [*arbitrators*], of, &c. (*m*), arbitrators named as well on behalf of the above bounden [*obligor*], as of the above-named [*obligee*], to award and determine concerning all differences and disputes now existing between the said [*obligor*] and the said [*obligee*], so as the said award be made in writing, under the hands of the arbitrators (*n*), and ready to be delivered to the parties, or if they or either of them shall be dead before the award shall have been made to their respective executors or administrators, who shall desire the same, on or before the —— day of —— next (*o*), then the above written bond shall be void,

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(*k*) Submissions are not unfrequently made by bond, each party executing to the other a bond in a named penalty, to abide by the award of the arbitrator. An arbitration bond requires an *ad valorem* bond stamp up to 300*l*., and 10*s*. for penalty of 300*l*. and upwards: see Stamp Act, 1891, sched. *tit.* "Bond."

(*l*) The heirs of the obligor are bound, though not expressly mentioned.

Three arbitrators.

(*m*) If there be three arbitrators, which it is sometimes thought advisable to appoint in the first instance, as it prevents the necessity of having an umpire, say,

" or any two of them."

(*n*) " or any two of them."

(*o*) If the arbitrators are to extend the time, say,

Enlarged time.

" or, on or before such other day, not beyond the —— day of ——, as the arbitrators [or any two of them] shall, by writing under their hands, from time to time appoint."

Umpire.

If there be only two, or an equal number of arbitrators appointed, and on their disagreement an umpire is to be appointed, say,

" And in case the arbitrators should not make such their award within the time limit as aforesaid, if the above bounden [*obligor*],

and of no effect. And these presents shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory re-enactment or modification thereof for the time being in force.

Signed, sealed, and delivered
in the presence of

IV. APPOINTMENT *of an* ARBITRATOR *in* PURSUANCE *of an* ARBITRATION CLAUSE *in* ARTICLES *of* PARTNERSHIP.

MEMORANDUM.

WHEREAS by articles of partnership, dated, &c., and made, &c., amongst other things, IT WAS AGREED, that in case any dispute or question should arise between the said parties relative to the construction of the said articles, or to all or any of the matters or things therein contained, the same should be referred to the arbitration of two indifferent persons, one to be named by each of the parties, with power for such arbitrators to appoint an umpire in case of their disagreement: And that the award of the said arbitrators or umpire should be final and conclusive: AND WHEREAS disputes have arisen between the said parties relating to their partnership (and also relating to several other matters and things), and they have in pursuance of the said covenant agreed to refer the same accordingly. NOW, THEREFORE, I [*partner*] hereby nominate and appoint [*arbitrator*], of, &c., as arbitrator for me and on my behalf, to hear and determine the

Recital of articles of partnership,

that disputes have arisen.

Appointment of arbitrator.

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his heirs, executors, and administrators, shall in all things well and truly obey, abide by, and perform the award and final determination of [*umpire*], of, &c., being the umpire named and chosen by the parties [*or*, "of such third person as the arbitrators shall in writing nominate and appoint as umpire] in and concerning the premises: So as the umpire do make and set down his award and umpirage in writing, and ready to be delivered to the parties or their respective executors or administrators who shall desire the same, on or before the —— day of —— next,—Then," &c.

IV. BY ARTICLES OF PARTNERSHIP.

disputes aforesaid, in accordance with the provisions of the said articles of partnership.

Dated the —— day of ——, 19—.

WITNESS, A. B.

[*Signature.*]

V. NOTICE *by a* LANDOWNER *of* CLAIM *for* COMPENSATION, *and of* DESIRE *to have the same* SETTLED *by* ARBITRATION *under the Lands Clauses Consolidation Act*, 1845, *s.* 23; *and* REQUESTING *the* COMPANY *to concur in the* APPOINTMENT *of an* ARBITRATOR.

To the —— Railway Company.

Recital: of notice of lands being required;

WHEREAS I have received notice stating that you require to purchase or take for the purposes of your undertaking the lands specified in such notice, and particularly described in the schedule hereto, and that you are willing to treat for the purpose thereof, and as to the compensation to be made to me for the damage that may be sustained by me by reason of the execution of your works.

of amount of compensation offered.

AND WHEREAS upon such treaty you have offered me the sum of £——, and no more, for purchase-money and compensation in respect of the premises, and I am not satisfied therewith.

Statement of interest in lands;

NOW I HEREBY give you notice that I am interested in the said lands as tenant in fee simple in possession, and that I claim

of amount of compensation claimed;

the sum of £—— [*a sum exceeding* 50*l.*], as purchase-money and compensation in respect of such my interest, including compensation for all damage which I shall incur by reason of the severing of the lands intended to be taken from my other lands, or by your otherwise injuriously affecting my other lands by the execution of your works, but exclusive of all costs, charges and expenses incurred, or which may be incurred by me, in relation to the premises.

of desire that amount shall be settled by arbitration.

AND I further hereby give you notice that, in case you should dispute the amount of compensation so claimed by me as aforesaid, I desire to have the same settled by arbitration pursuant to the provisions of the Lands Clauses Consolidation Act, 1845.

Request to company to concur in appointing arbitrator.

AND I accordingly request you to concur with me in the appointment of a single arbitrator, or else to nominate and appoint an arbitrator to act on your behalf, by whom, together

with an arbitrator to be in such case appointed by me, the amount of compensation to be paid to me shall be settled (*p*). V. NOTICE BY LANDOWNER OF CLAIM FOR COMPENSATION.

Dated the —— day of ——, 19—.

A. B.

THE SCHEDULE ABOVE REFERRED TO.

VI. APPOINTMENT *of a* SINGLE ARBITRATOR *by a* LANDOWNER *and a* RAILWAY COMPANY *under the Lands Clauses Consolidation Act*, 1845.

WHEREAS the —— Railway Company are, by the —— Act, 19—, and the public Acts incorporated therewith, authorised to take the lands and hereditaments described in the schedule hereto, and have given due notice to [*landowner*], of, &c., that they require to take the same premises for the purposes of their undertaking: AND WHEREAS the said [*landowner*] is entitled to the said premises as tenant in fee simple in possession, or is otherwise by the said Acts enabled to sell and convey or release the same: AND WHEREAS the said [*landowner*] and the Company have been unable to agree as to the amount of compensation to be paid by the Company for the interest of the said [*landowner*] in the premises, and for the damage that may be sustained by him by reason of the execution of the works, and the said [*landowner*] has required that the amount of such compensation shall be settled in manner provided by the Lands Clauses Consolidation Act, 1845, by the arbitration of a single arbitrator: NOW THESE PRESENTS WITNESS that, in pursuance of the provisions

Recitals: of notice to take land; of landowner's interest; of dispute as to amount of compensation.

(*p*) The landowner should not appoint an arbitrator to act on his behalf without having endeavoured and failed to induce the company to concur with him in appointing a single arbitrator: *Yates* v. *Mayor of Blackburn*, 6 H. & N. 61. In the event of the company refusing or failing to appoint an arbitrator a further notice should be sent by the landowner to the company concluding with an appointment of an arbitrator on his behalf,

"to settle the amount of the purchase-money and compensation to be paid to me by you in respect of my interest in the said lands."

VI. OF SINGLE ARBITRATOR.

Appointment of single arbitrator.

of the last hereinbefore-mentioned Act, the said [*landowner*] and the Company do and each of them doth hereby nominate and appoint [*arbitrator*], of, &c., to be the sole arbitrator to settle and determine by his award the questions of disputed compensation which have so arisen as aforesaid, having regard not only to the value of the interest of the said [*landowner*] in the said premises, subject to subsisting leases and tenancies, but also to the damage (if any) which may have been or may be sustained by the said [*landowner*] by reason of the severing of the same premises from his other lands or by otherwise injuriously affecting such other lands (*pp*) by the exercise of the powers of any of the Acts hereinbefore mentioned. IN WITNESS WHEREOF the said [*landowner*] and [*director*] and [*director*], two of the directors (*q*) of the —— Railway Company, on behalf of the Company, have hereunto set their hands this —— day of ——, 19—.

THE SCHEDULE ABOVE REFERRED TO.

VII. NOTICE *to* PRODUCE DOCUMENTS *by a* SOLICITOR *of* ONE *of the* PARTIES *in an* ARBITRATION.

IN THE MATTER of the arbitration between A. B. and C. D.

To Messrs. —— and ——, Solicitors.

THIS IS TO GIVE YOU NOTICE to produce before [*arbitrator*] and [*arbitrator*], the arbitrators to whom all matters in difference between the above-named parties have been referred, on the —— day of —— at —— o'clock, at the —— Hotel, —— Street, all books, deeds, writings, vouchers, and other documents whatsoever relating to the matters in difference between the said parties so referred as aforesaid, now in your possession, custody, or

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(*pp*) See Lands Clauses Consolidation Act, 1845, s. 68; *Caledonian Rail. Co.* v. *Walker*, 7 App. Cas. 259.

(*q*) An appointment of an arbitrator under the Lands Clauses Consolidation Act, 1845, is to be "under the hands of the promoters or any two of them, or of their secretary or clerk": see sect. 25; and sect. 126 of the Railways Clauses Consolidation Act, 1845, specifies "the secretary or any two of the directors" as the proper persons to sign an appointment under that Act.

control, and particularly a certain indenture, dated, &c., and made between, &c. [*describe the instrument*].

Dated the —— day of ——.

E. F.,
Solicitor for A. B., Esquire.

VIII. NOTICE *to* PRODUCE DOCUMENTS *by an* ARBITRATOR.

IN THE MATTER of the arbitration between A. B. and the —— Railway Company.

To A. B., Esquire.

PURSUANT to the powers given to me by the Lands Clauses Consolidation Act, 1845 (*r*), and of every other power me hereunto enabling, I HEREBY REQUIRE you to produce before me on —— next, at my office, —— Street, Westminster, the several books of account, deeds, writings, and other documents, specified in the schedule hereto annexed, and all other documents relating to the matters referred to me in the above-mentioned arbitration (*s*).

Dated the —— day of ——, 19—.

C. D.,
Arbitrator.

THE SCHEDULE ABOVE REFERRED TO.

IX. NOTICE *by* ARBITRATORS *to* UMPIRE *of* DISAGREEMENT (*ss*).

IN THE MATTER of the arbitration between A. B. and C. D.

To ——, Esquire, Umpire.

THIS IS TO GIVE YOU NOTICE, that we are unable to agree with regard to the matters referred to us in the above-

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(*r*) Or otherwise state the submission. As to the power of an arbitrator under this Act to require production of documents, see sect. 32. Arbitrators, or their umpire, are given similar powers by the Railways Clauses Consolidation Act, 1845, s. 133; the Companies Clauses Consolidation Act, 1845, s. 128; and the Railway Companies Arbitration Act, 1859, s. 18; and by various other particular Acts, and generally by the Arbitration Act, 1889, 1st schedule (f).

(*s*) As to enforcing the arbitrator's requirement for production of documents, see *Arbuckle* v. *Price*, 4 Dowl. 174.

(*ss*) See Arbitration Act, 1889, sched. 1 (d).

IX. BY ARBITRATORS OF DISAGREEMENT.

mentioned arbitration, and that there is no probability of our making any award, and that you are at liberty to proceed as umpire forthwith, to investigate and decide on the said matters.

Dated the —— day of ——, 19—.

E. F. }
G. H. } *Arbitrators.*

X. ENLARGEMENT *of the* TIME *for* MAKING *an* AWARD *by the* ARBITRATORS (*ss*).

IN THE MATTER of the arbitration between A. B. and C. D.

WE, the undersigned, by virtue of the power given to us by an agreement, dated, &c., whereby the matters in difference between the above-named parties were submitted for arbitration, do hereby enlarge [*or*, further enlarge] the time for making our award, respecting the said matters, until the —— day of —— next, on or before which day our award shall be made and published.

As WITNESS our hands this —— day of ——, 19—.

E. F. }
G. H. } *Arbitrators.*

XI. REVOCATION *of* SUBMISSION *by a* PARTY.

Revocation of submission.

KNOW ALL MEN (*sss*) BY THESE PRESENTS, that I [*party*], of ——, in the county of ——, do hereby revoke, annul, and make void all the powers and authority which by a memorandum of agreement, dated the —— day of ——, 19—, and expressed to be made between [*parties*], were given to [*arbitrator*], of, &c., and [*arbitrator*], of, &c., the arbitrators thereby nominated and appointed to investigate, award, and determine all matters in difference between me and [*other party*], of, &c., concerning the dealings and transactions in the said memorandum of agreement mentioned: AND I do further hereby discharge and prohibit the said [*arbitrator*] and [*arbitrator*], or either of them, from making

Discharge of arbitrators.

(*ss*) As to the power of the Court to enlarge the time, see Arbitration Act, 1889, s. 9; and see *Knowles & Sons, Ltd.* v. *Bolton Corp.*, [1900] 2 Q. B. 253.

(*sss*) Stamp, 10*s.*, if under seal.

any award, or further proceeding in the matter of the said arbitration.

As WITNESS my hand [and seal (*t*)] this —— day of ——, 19—.

Witness, C. D.

A. B.

XII. APPOINTMENT *of a* JOINT ARBITRATOR, *by* TWO ARBITRATORS. (*By* INDORSEMENT.)

WE [*arbitrators*] the arbitrators within named, by this memorandum in writing under our hands, made before entering upon the within-mentioned arbitration, do hereby nominate and appoint [*third arbitrator*], of, &c., the third arbitrator, to whom, together with ourselves, the within-mentioned matters shall be referred, according to the tenor and effect of the within written bond [*or*, obligation, *or*, indenture], on condition that he do, within —— days from the date hereof, in writing, consent to act therein accordingly.

IN WITNESS, &c. (*u*).

XIII. APPOINTMENT *of an* UMPIRE *by* ARBITRATORS. (*By* INDORSEMENT (*v*).)

WE, the within named [*arbitrators*], by virtue of the powers given to us by the within written agreement [*or*, by an order made by Mr. Justice ——, on the —— day of ——, in an action, &c.], do hereby nominate and appoint [*umpire*], of, &c., to be the

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(*t*) All submissions are now irrevocable (see Arbitration Act, 1889, s. 1), unless a contrary intention is expressed therein, except by leave of the Court or a judge. If the submission was made by deed it would appear that the revocation should likewise be by deed: see *Re Morphett*, 2 Dowl. & L. 967. Notice of the revocation, whether made by deed or parol, should be given to the arbitrators and to the other party: see *Marsh* v. *Bulteel*, 5 B. & Ad. 507. For another form of revocation, see *Fraser* v. *Ehrensperger*, 12 Q. B. D. 310.

(*u*) All three arbitrators must concur in the award: *United Kingdom, &c. Association* v. *Houston & Co.*, [1896] 1 Q. B. 567.

(*v*) See *Re Hopper*, L. R. 2 Q. B. 367; Arbitration Act, 1889, sched. 1 (b).

XIII. OF UMPIRE.

umpire (*x*), in the matters within referred, on condition that he do, within —— days from the date hereof, in writing, accept the umpirage.

As WITNESS our hands, &c. (*y*).

XIV. APPOINTMENT *of an* UMPIRE *by* ARBITRATORS. (NOT INDORSED.)

WE, the undersigned arbitrators, by virtue of the powers to us given by an agreement of reference made on the —— day of ——, 19—, between, &c. [*or*, by an order made by Mr. Justice ——, on the —— day of ——, in an action, &c.], do hereby nominate and appoint [*umpire*], of, &c., to be the umpire, according to the provisions of the said agreement of reference [*or*, order], on condition, &c. [*see last precedent*].

As WITNESS our hands, &c.

XV. APPOINTMENT *of an* UMPIRE *by* ARBITRATORS *under the Lands Clauses Consolidation Act*, 1845.

IN THE MATTER of the Lands Clauses Consolidation Act, 1845, and of the —— Act, 18—, and of a question of disputed compensation arisen under the said Acts between the —— Railway Company and [*landowner*], of, &c., Esquire.

WE, the undersigned [*arbitrator*], of, &c., the arbitrator appointed by and on behalf of the above-named Company, and the undersigned [*arbitrator*], of, &c., the arbitrator appointed by and on behalf of the above-named [*landowner*], do hereby, before entering upon the matters referred to us, nominate and appoint [*umpire*], of, &c., to be the umpire in the matter of the question of disputed compensation above referred to, to decide on any matters on which we shall differ, or which shall be referred to him

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(*x*) If it be to assist the arbitrators (see *Still* v. *Halford*, 4 Camp. 17), say,

Third arbitrator.

"To assist us in," &c.

Stamp.

(*y*) No stamp is necessary: *Routledge* v. *Thornton*, 4 Taunt. 704.

under the provisions of the —— Act, or of the Lands Clauses Consolidation Act, 1845. XV. OF UMPIRE.

As WITNESS our hands this —— day of ——, 19—.

A. B.
C. D.

XVI. AWARD *of one* ARBITRATOR *for* PAYMENT *of a* SUM *of* MONEY; *and for* MUTUAL RELEASES (*yy*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*arbitrator*], of, &c., send greeting. WHEREAS divers differences and disputes having arisen between A. B., of, &c., and C. D., of, &c., the said A. B. and C. D., by an agreement, dated, &c., and made, &c., agreed to refer the same to the award and determination of me the said [*arbitrator*]; and did accordingly, by their several obligations, bearing date on or about the —— day of —— respectively, become bound each to the other in the penal sum of £——; with conditions thereunder written, to obey and perform my award concerning all the matters in difference; so as the said award should be made in writing and ready to be delivered to the said parties in difference, or such of them as should require the same, on or before the —— day of —— then next. NOW KNOW YE that I, the said [*arbitrator*], having taken upon me the said award and arbitrament, and having been attended by the said parties and their respective solicitors, and having heard and considered the allegations and evidence of both the said parties and their witnesses concerning the premises, do hereby award as follows, that is to say:—

Recitals of differences and submission; of bonds, with conditions for performance of award. Award:

1. I award and determine that the said C. D. shall pay to the said A. B. on the —— day of —— next ensuing, the sum of £——. of sum of money;

2. I further award and determine that upon payment of the said sum of £—— to the said A. B. as aforesaid, they the said A. B. and C. D. shall respectively, at the cost of the party requiring the same, make and execute each unto the other of them releases in writing of all actions, proceedings, debts, con- and that each of the parties shall give to the other a general release.

(*yy*) As to the stamp duties on awards, see the schedule to the Stamp Act, 1891, *sub tit.* Award. The stamp is *ad valorem* on the amount awarded according to the scale up to 1,000*l.*, the duty on which sum, and in any other case, is 1*l.* 15*s.*

XVI. OF ARBITRATOR.

troversies, claims, and demands whatsoever, up to the day of the date of the aforesaid obligations.

Costs.

3. I further award that the costs of the reference, including the costs of the preparation and execution of the said agreement of reference and of this award, shall be borne and paid as to one moiety thereof by the said A. B., and as to the other moiety by the said C. D. [*or otherwise as the arbitrator may direct*].

In witness whereof I, the said [*arbitrator*], the arbitrator aforesaid, have hereunto set my hand the —— day of ——, 19—.

Signed and published in the presence of us (*z*)

XVII. AWARD *that a* Partnership *be* Dissolved *with consequent* Directions (*zz*).

Recital of disputes,

TO ALL TO WHOM these presents shall come, I [*arbitrator*], of, &c., send greeting. Whereas divers disputes and differences have arisen between A. B. and C. D. with reference to the business carried on by them in partnership under the style or firm of B. & Co., and with reference to their respective rights and liabilities under their articles of partnership, dated, &c. And whereas by an agreement, dated, &c., and made, &c., the said A. B. and C. D. agreed to refer all such disputes and differences to me as arbitrator, with power among other things to award that the said partnership should stand dissolved as from any day in the year 19— which I might fix by my award. NOW KNOW YE, that I, the said [*arbitrator*], having, &c. [*see last precedent*], do make this my award of and concerning the matters so referred to me as aforesaid, in manner following, that is to say:—

—and submission to arbitration.

Award:

that partnership be dissolved;

1. The said partnership shall be deemed to have been determined on, and shall stand dissolved from the —— day of ——.

that A. B. shall receive all the partnership debts;

and may use C. D.'s name

2. The said A. B., his executors or administrators, shall have, and receive to his or their own use, without the interference of the said C. D., all debts due and owing to the said partnership, from any person whomsoever: And may use the name

(*z*) It seems generally prudent to have two witnesses to an award or umpirage, in order to prevent the trouble which would be caused in case a single witness should die, and it should afterwards be requisite to have an affidavit of the due execution, in order to ground a motion for an attachment.

(*zz*) For stamp, see *ante*, p. 127, note.

of the said C. D. in any action or proceeding to be commenced for the recovery of any such debt or demand.

XVII. FOR DISSOLUTION OF PARTNERSHIP.

in any action or suit for recovery thereof;

3. The said A. B. shall pay and discharge all debts, demands, and claims whatsoever, due by, or which may be made against the said partnership, or the said C. D. in respect thereof: AND shall indemnify the said C. D. from all such debts, demands and claims, and from any loss or damage that may be incurred or sustained by the said C. D., by reason of his name being used in any such action or proceeding as aforesaid.

that A. B. shall pay all demands on the co-partnership;

and indemnify C. D. therefrom;

and from all damages by reason of his name being used;

4. The said C. D. shall, upon the request of the said A. B., his executors or administrators, deliver up to him or them all and every the books, papers, and writings, which may be in the custody, power, or possession of him the said C. D., in anywise relating to the business of the said partnership.

that A. B. shall, at a fixed time and place, pay a sum of money to C. D.

5. The said A. B. shall on the —— day of —— next, at the house of the said C. D., at —— aforesaid, pay to the said C. D. the sum of £——. And the said C. D. shall accept the same sum in full satisfaction and discharge of all demands against the said A. B., up to the day of the date of the said submission.

Costs.

6. I further award that the costs of this reference (*ante*, p. 128).

IN WITNESS, &c.

XVIII. AWARD *of* UMPIRE *as to* COMPENSATION *in respect of* LANDS *taken by a* RAILWAY COMPANY (*a*).

Recitals:

that company were authorised to take the lands;

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*umpire*], of, &c., send greeting. WHEREAS under or by virtue of the —— Railway Act, 18—, and the Public Acts incorporated therewith, the —— Railway Company (hereinafter referred to as "the company") are empowered to take for the purposes of the railway and works authorised by their said Act certain lands and hereditaments situate in the parish of ——, in the county of ——, and particularly described in the schedule hereunder written and

(*a*) The award is generally taken up by the successful party, but in the case of an award under the Lands Clauses Consolidation Act by the company: see *R.* v. *Barton, &c. Rly.*, [1912] 3 K. B. 72. See as to awards under the Act, Russell, 9th ed. 267 *et seq.* The award may be enforced at any time within six years from the date of the award: *Turner* v. *Midland Rail. Co.*, [1911] 1 K. B. 832. As to stamp, see *ante*, p. 127, note.

XVIII. OF UMPIRE IN RESPECT OF LANDS TAKEN BY RAILWAY COMPANY.

delineated in the map or plan hereunto annexed, and therein coloured ——: AND WHEREAS, on or about the —— day of —— last, the company duly gave notice in writing to [*landowner*], of, &c., the owner of the lands and hereditaments described in the said schedule, that they required to take the same for the purposes of the said railway and works, and that they were willing to treat for the purchase of the said lands and hereditaments, and as to the compensation to be made to the said [*landowner*] for the damage that might be sustained by him by reason of the execution of the works of the said railway: AND WHEREAS the said [*landowner*], by a notice in writing, dated, &c., claimed the sum of £—— as compensation for the value of the said lands and hereditaments, and for such damage as aforesaid: AND WHEREAS the said company offered to pay to the said [*landowner*] the sum of £—— as such compensation as aforesaid, and have made no other offer: AND WHEREAS the said [*landowner*] by a notice in writing, dated, &c., and delivered to the company before their warrant had been issued to the sheriff to summon a jury in respect of the said lands and hereditaments, signified his desire to have such compensation settled by arbitration: AND WHEREAS the company, by an instrument in writing, under the hand of their secretary, dated, &c., appointed [*arbitrator*], of, &c., to be the arbitrator on their part to whom the dispute as to such compensation as aforesaid should be referred: AND WHEREAS the said [*landowner*], by an instrument in writing, dated, &c., appointed [*arbitrator*], of, &c., to be the arbitrator on his part to whom the said dispute should be referred: AND WHEREAS the said [*arbitrator*] and [*arbitrator*], before entering upon the matters referred to them as aforesaid, by an instrument in writing, dated, &c., appointed me, the said [*umpire*], to be the umpire in the matter of the said arbitration: AND WHEREAS the said [*arbitrators*], by an instrument in writing, dated, &c., duly appointed an extended time for the making of their award, namely, until the —— day of ——, 19—: AND WHEREAS the said [*arbitrators*] disagreed respecting the matters referred to them, and by reason of such disagreement failed to make their award on or before the said —— day of ——, 19—, whereby the matters referred to the said [*arbitrators*] came before me as umpire for determination. NOW KNOW YE that I, the said [*umpire*], having taken upon myself the burthen of the said reference, and having, before entering upon any of the matters referred to me, duly made, and subscribed before a justice duly

of notice by company of lands required;

of notice by landowner of claim for compensation;

of compensation offered by company;

of notice by landowner of demand of arbitration;

of appointment by company of arbitrator;

of appointment by landowner of arbitrator;

of appointment by arbitrators of umpire;

of extension of time for making award;

of disagreement of arbitrators.

Award.

XVIII. OF UMPIRE IN RESPECT OF LANDS TAKEN BY RAILWAY COMPANY.

authorised in that behalf the declaration required by the said Acts, which said declaration is hereunto annexed, and having been attended by the parties and their witnesses, and having viewed the said lands and hereditaments, and having inquired into and fully considered the said matters in dispute and connected therewith, do make this my award in manner following (that is to say):—

Award of compensation.

1. I AWARD and direct that the company shall pay to the said [*landowner*], his executors or administrators, the sum of £—— for and in respect of the value of the said lands and hereditaments so to be taken as aforesaid, and for all damage which may be sustained by the said [*landowner*] by the severing of the said lands and hereditaments from the other lands of the said [*landowner*], and by otherwise injuriously affecting such other lands by the exercise by the company of the powers contained in the said Acts.

Costs (*b*).

2. I hereby award and assess the costs of the said [*landowner*] of and incident to this arbitration at the sum of £——, and the costs of and incident to this my award, at the sum of £——.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

DECLARATION (*c*).

ATTESTATION (*d*).

PRECEDENTS.

I. ATTESTATION *of an* INSTRUMENT *not under* SEAL. (COMMON FORM.)

SIGNED by the above-named A. B. in the presence of
C. D., of, &c. [*add address and description*].

(*b*) As to costs, see Lands Clauses Consolidation Act, 1845, s. 34; *Fisher* v. *G. W. Rail. Co.*, [1911] 1 K. B. 551.

(*c*) As to the declaration to be annexed to the award, see the Lands Clauses Consolidation Act, 1845, s. 33.

Attestation generally.

(*d*) Generally speaking, attestation is not essential to the validity of a deed unless it be made in exercise of a power which has prescribed it as a requisite circumstance. In such a case the terms of the power must

II. OF DEED OR INSTRUMENT UNDER SEAL.

II. ATTESTATION *of a* DEED *or* INSTRUMENT *under* SEAL. (COMMON FORM.)

SIGNED, sealed, and delivered by the within named [*or*, above-named] A. B. in the presence of

C. D., of, &c. [*add address and description*].

III. ATTESTATION *of* EXECUTION *of a* DEED *by a* COMPANY *or* CORPORATION *having a* COMMON SEAL.

THE SEAL of the within named [*or*, above named] company was affixed in the presence of

A. B., C. D., } *Directors.*
E. F., *Secretary.*

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be observed; but by the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 12, any deed or other instrument *inter vivos* executed in the presence of and attested by two or more credible witnesses is to be deemed a due execution of a power of appointment as regards execution and attestation. As to the attestation of appointments by will, see the Wills Act (1 Vict. c. 26), ss. 9 and 10; and as to foreign wills admissible to probate in England, but not executed and attested in English form, see *Hummel* v. *Hummel*, [1898] 1 Ch. 642; *In re D'Este's Settlement Trusts*, [1903] 1 Ch. 898; *In re Scholefield*, [1905] 2 Ch. 408.

Attestation required by statutes.

Certain classes of instruments are required to be attested by statutory enactment, *e.g.*: (i.) Agreements between a master of a merchant ship and an apprentice or seaman: see the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 107, 115, 116, 122, 124. (ii.) Assurances of land or of personalty to be laid out in the purchase of land for charitable purposes: see the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42). (iii.) Bills of sale: see the Bills of Sale Act, 1882 (44 & 45 Vict. c. 43), s. 10; *Peace* v. *Brookes*, [1895] 2 Q. B. 451. As to registered land, see L. T. R. 108, 109. As to a purchaser's right to have, at his own cost, the execution of his conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor, see C. A. 1881, s. 8 (1), applied to transfers of registered land by L. T. A. 1897, s. 9 (1).

IV. ATTESTATION *of the* EXECUTION *of a* DEED *in which there are* INTERLINEATIONS (*b*), ERASURES, *or* OBLITERATIONS.

SIGNED, sealed, and delivered (*c*), by the within named [A. B.] the words "[*words interlined*]" having been previously interlined [*or*, written over obliterations], between [*or*, obliterated in] the fourth and fifth lines of the first skin of the within written indenture [*or*, the word "*Henry*," having been previously interlined between the words "*Thomas Johnson*"] and the name —— written [on an erasure in the tenth line of the second skin thereof] in the presence of, &c.

(*b*) As to alterations, erasures, and interlineations in deeds, see Norton on Deeds, 26 *et seq.*; and 4 Cru. Dig. 407, 4th ed. The result of the cases would seem to be that at the present day no deed would be held to be void on account of any immaterial alteration by whomsoever made after execution; and with respect even to a material alteration, if it be made with the consent of the parties affected, it forms no objection to the validity of the deed, and in any case the invalidity attaches only to the additional matter at any rate where no fraud was intended: see *Aldous* v. *Cornwell*, L. R. 3 Q. B. 573; *Crediton* (*Bishop*) v. *Exeter* (*Bishop*), [1905] 2 Ch. 455; *Howgate and Osborne's Contract*, [1902] 1 Ch. 451. An interlineation (if nothing appears to the contrary) will be presumed to have been made before the execution of the deed, and not after: *Trowell* v. *Castle*, 1 Keb. 22 (5); see also *Fitzgerald* v. *Lord Falconbridge*, Fitzgib. 214. As to alterations in a *bill of exchange*, see *Henman* v. *Dickenson*, 2 Moo. & P. 289; 5 Bing. 183; *Bishop* v. *Chambre*, 3 Car. & P. 55; *Taylor* v. *Mosely*, 6 Car. & P. 273; *Knight* v. *Clements*, 3 Nev. & P. 375. As to erasure in a Bank of England note, see *Suffell* v. *Bank of England*, 9 Q. B. D. 555. The modern practice is, when any alteration, interlineation, or erasure is made in a deed, before it is executed to take notice of it in the attestation: 4 Cru. Dig. 407, 4th ed. It is unnecessary, but not unusual, for the parties and attesting witnesses to initial alterations, &c. in deeds. As to wills, see stat. 1 Vict. c. 26, s. 21.

Effect of erasures, &c. after execution.

(*c*) The usual mode of delivering a deed is to take it up and say, "I deliver this as my act and deed."

Delivery of deeds.

But a deed may be delivered without words: Co. Litt. 36a; Shep. Touch. 57; so a deed may be delivered by words without any act of delivery: Co. Litt. 36a, 49b. Where a deed is attested to have been "signed, sealed, *and delivered*," it is not necessary in proving its execution that the witness should be able distinctly to recollect the act of delivery: the presumption will be in favour of the execution having been according to the attestation: *Ball* v. *Taylor*, 1 Car. & P. 417.

V. OF EXECUTION OF A DEED, &C.

V. ATTESTATION *of the* EXECUTION *of a* DEED *by another* PARTY, *where* INTERLINEATIONS, *&c. have been* NOTICED *in a previous* ATTESTATION.

SIGNED, sealed, and delivered, by the within named C. D. (the interlineation and erasure noticed in the attestation of the execution by A. B. indorsed hereon, having been previously made), in the presence of, &c.

VI. ATTESTATION *of the* EXECUTION *of a* DEED *by a* BLIND PERSON (*d*).

THE within written indenture was signed, sealed, and delivered by the within named A. B.; the same having been first carefully read over to him (he being blind) (*e*) in the presence of us [*witnesses*].

VII. ATTESTATION *of the* EXECUTION *of a* DEED *by a* PERSON DEAF *and* DUMB (*f*).

THE within written indenture was signed, sealed, and delivered, by the within named A. B., who, being deaf and dumb, but capable of reading, the same indenture was first read over by him, and he seemed perfectly to understand [*or, if the witnesses can so attest,* perfectly understood] the same, in the presence of us [*witnesses*].

A blind person may make a valid deed or will, &c.

(*d*) A person whose only infirmity is blindness, may make a valid deed or will, and could formerly have acknowledged a fine or recovery: *Shulter's case,* 12 Co. 90; Com. Dig. *Capacity,* (C).

The will of a blind person need not be read in the presence of the witnesses.

(*e*) It is not necessary to the validity of the execution of a will of lands by a blind man, that it should be read over to him in the presence of the attesting witnesses: *Longchamp* d. *Goodfellow* v. *Fish,* 2 Bos. & P. N. R. 415. If a person liable, from blindness, ignorance, or other causes, to be deceived, is induced to execute a deed on the supposition that its effect is different from that which it really is, the deed will be fraudulent and void against him: see *Doe* d. *Lloyd* v. *Bennett,* 8 Car. & P. 124.

A person born deaf and dumb is not thereby incapacitated from making a deed or will, &c.

(*f*) A person born deaf and dumb is not thereby incapacitated to execute a deed or will, if he has sufficient understanding to give evidence of his assent, either by his own signs or by signs with the assistance of an interpreter: see *Ruston's case,* 1 Leach, Cr. C. 408; and *Steel's case,* 1 Leach, Cr. C. 451. Persons born blind, deaf, and dumb, as they have always wanted the inlets of understanding, are incapable of making either a gift, lease, grant, or will: Co. Litt. 42b; Com. Dig. *Capacity* (D. 4).

VIII. ATTESTATION *of the* EXECUTION *of a* DEED *by an* ILLITERATE PERSON.

THE within written indenture was sealed and delivered by the within named A. B., who made his mark thereto, the same being previously read (*g*) over to him in the presence of us [*witnesses*].

IX. ATTESTATION *of a* DEED *executed under a* POWER *of* ATTORNEY.

SIGNED, sealed, and delivered (*h*), by the within named [*attorney*], as the attorney of the within named [*principal*], in the presence of us [*witnesses*].

X. ATTESTATION *of a* DEED *executed by the* COMMITTEE *or* QUASI-COMMITTEE *of a* LUNATIC.

SIGNED, sealed, and delivered by the above named [*committee*], as the committee [*or*, "person appointed to exercise the powers of a committee"], and in the name and on behalf of the above named [*lunatic*], and also in his own name and as his own act and deed, in the presence of us [*witnesses*].

XI. ATTESTATION *of a* DEED *executed by* ONE *of the* PARTIES *in his own* RIGHT, *and as the* ATTORNEY *of another of them*.

SIGNED, sealed, and delivered by the above-named A. B. with his own name, and as his own act and deed; and afterwards, as the attorney, and with the name, and as the act and deed, of the above-named C. D., by virtue of a letter of attorney given to him, the said A. B., for that purpose, and dated, &c., in the presence of us [*witnesses*].

(*g*) It is not the practice to vary the form of attestation on account of the person executing it being illiterate. But it might be prudent to state in the attestation the fact of having read the deed to the executing party. Attestation of deed executed by an illiterate party.

(*h*) The usual mode of delivering a deed by an attorney is, to take it up, and say, The mode of delivering a deed by an attorney.

"I deliver this as the act and deed of the within named [*principal*]."

ATTORNEY, POWERS OF.

PRELIMINARY NOTE.

The authority to execute a deed must as a rule be given by a deed in the form of a power of attorney.

A power involving the exercise of personal discretion cannot be delegated, and cannot therefore be exercised by attorney (Farwell on Powers, 2nd ed., p. 441), but a power to do an act merely ministerial may be delegated. (*Ibid.* p. 445.) The maxim, "delegatus non potest delegari," does not apply to general powers. (*Ibid.* p. 446.)

The powers of attorney in the following forms are of the nature of naked powers, *i.e.*, powers conferring no benefit on the donee, but merely enabling him to do some ministerial act on behalf of the donor. Subject to sect. 9 of the Conveyancing Act, 1882 (*see infra*), such powers are in their nature revocable, and are revoked by (1) the death (Co. Litt. 52b), or (2) the lunacy (*Drew* v. *Nunn*, 4 Q. B. D. 661), or (3) the bankruptcy (*ibid.* pp. 665, 666) of the donor, and formerly, in the case of a female donor, by her marriage. (*Ibid.*)

The Conveyancing Act, 1881, s. 47, protects a person making or doing any payment or act in good faith under a power of attorney after the donor has, unknown to such person, died or become lunatic, of unsound mind, or bankrupt, or has revoked the power. (See, too, as to trustees, Trustee Act, 1893, s. 23.) By sect. 8 of the Conveyancing Act, 1882, a power of attorney given for valuable consideration may be made absolutely irrevocable in favour of a purchaser (including a lessee or mortgagee, see Conveyancing Act, 1881, s. 2 (viii.)), and by sect. 9 of the Conveyancing Act, 1882, a power of attorney, whether for valuable consideration or not, may be made irrevocable for a *fixed time* not exceeding one year; so that any act done within that fixed time under the power shall be valid, notwithstanding the death of the donor or any other event by which the power would be revoked, and so that neither the donee nor the purchaser shall be affected by notice of any event which would revoke the power.

On a sale where the conveyance is to be executed under a power of attorney which has not been made irrevocable for a fixed time

under the Conveyancing Act, 1882, s. 8 or 9, it is advisable that the purchase-money be deposited or retained until it is known that the donor is living and that no event has happened to revoke the power before the conveyance is executed, and evidence of this should be preserved for use on any future sale.

The Conveyancing Act, 1881, s. 48, provides for the deposit in the Central Office of the Supreme Court of powers of attorney properly verified with the affidavit or declaration verifying the same.

As to registered land, see L. T. R. 110.

A company cannot delegate a discretionary power to an attorney, but may appoint an attorney for purely ministerial purposes, and under sect. 78 of the Companies (Consolidation) Act, 1908, a company registered under the Act may appoint an attorney to execute a deed abroad. As to the effect of winding-up proceedings, see *Re Oriental Bank*, 28 Ch. D. 634, 640.

As to execution of powers of attorney by a trustee in bankruptcy, see the Bankruptcy Act, 1914, s. 55 (4).

As to whether or to what extent a foreign power of attorney is to be governed by foreign or English law, see *Chatenay* v. *Brazilian Submarine Telegraph Co., Limited*, [1891] 1 Q. B. 79.

See generally as to powers of attorney, Byth. & Jarm., 4th ed., Vol. IV., p. 855; and Key & Elph., 10th ed., Vol. I., pp. 206 *et seq.*

The stamp duties on powers of attorney are regulated by the schedule to the Stamp Act, 1891, *tit.* "Letter or Power of Attorney," which runs as follows:—

LETTER OR POWER OF ATTORNEY and COMMISSION, FACTOR'S MANDATE, or other instrument of the nature thereof.

	£	s.	d.
(1.) For the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more	0	0	1
(2.) By any petty officer, seaman, marine, or soldier serving as a marine, or his representatives, for receiving prize money or wages	0	1	0

	£	s.	d.
(3.) For the receipt of the dividends or interest of any stock:			
Where made for the receipt of one payment only	0	1	0
In any other case	0	5	0
(4.) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money not exceeding 20*l.*, or any periodical payments not exceeding the annual sum of 10*l.* (*not being hereinbefore charged*) . .	0	5	0
(5.) For the sale, transfer, or acceptance of any of the Government or Parliamentary stock or funds:			
Where the value of the stocks or funds does not exceed 20*l.* . . .	0	5	0
In any other case	0	10	0
(6.) Of any kind whatsoever not hereinbefore described	0	10	0

Exemptions.

(1.) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend less than 3*l.*

(2.) Letter or power of attorney or proxy filed in the Probate Division of the High Court of Justice in England or Ireland, or in any ecclesiastical court.

(3.) Order, request, or direction under hand only from the proprietor of any stock to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named.

And see sects. 80 and 81.

COMMON FORMS.

COMMON FORMS.

Commencement and witnessing part where there are no recitals.

I. KNOW ALL MEN BY THESE PRESENTS, that [*in consideration of the premises, or, state the consideration*], I, A. B., of, &c., do hereby [irrevocably] appoint C. D., of, &c., my attorney for me in my name to, &c.

The same where there are several principals and attornies.

II. KNOW ALL MEN BY THESE PRESENTS, that in consideration, &c., we, A. B., of, &c., C. D., of, &c., and E. F., of, &c., do and each of us doth hereby [irrevocably] appoint G. H., of, &c., J. K., of, &c., and L. M., of, &c., and any one or more of them, our attornies and attorney for us the said A. B., C. D., and E. F., and any one or more of us, and in the names or name of us or any one or more of us to, &c.

Commencement and witnessing part where there are recitals.

III. TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., sends greeting: WHEREAS [*recitals*]: NOW THESE PRESENTS WITNESS, that in consideration, &c., he the said A. B. doth hereby [irrevocably] appoint C. D., of, &c., his attorney for him and in his name to, &c.

The same where there are several principals and attornies.

IV. TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., C. D., of, &c., and E. F., of, &c., send greeting: WHEREAS [*recitals*]: NOW THESE PRESENTS WITNESS, that in consideration, &c., they the said A. B., C. D., and E. F., do and each of them doth hereby [irrevocably] appoint G. H., of, &c., J. K., of, &c., and L. M., of, &c., and any one or more of them, the attornies and attorney of the said A. B., C. D., and E. F., and any one or more of them, for them the said A. B., C. D., and E. F., and any one or more of them, and in their or his names or name, to, &c.

Power to enforce or resist claims.

V. To ENFORCE, resist, allow, remit, settle, compromise, or refer to arbitration, any claim by or against me [*or*, us or either of us] in respect of the premises.

Power to bring actions, &c.

VI. To INSTITUTE and carry on, or discontinue and to defend, or compromise, or refer to arbitration, or to confess judgment, or allow judgment to go by default in any action or legal proceeding in relation to the premises or any of them.

COMMON FORMS.

Power to receive money, give receipts, &c.

VII. To DEMAND, receive, take transfers of, and recover or allow in account, any money or property belonging to me [*or*, us or any one or more of us], and to give receipts and releases, and in a proper case indemnities, for or in respect of any money or property so received or allowed in account by, or transferred or delivered to, the attorney [*or*, attorneys or any one or more of them] under or by virtue of these presents.

Power to draw bills, &c.

VIII. To DRAW, accept, indorse, give, make, or negotiate, any cheque, bill, note, guarantee or other security for any of the purposes hereof.

To vote at meetings.

IX. To VOTE at the meetings of any company or companies, or otherwise act as my proxy or representative in respect of any shares which I now hold or may hereafter hold therein, and to execute any proxies or other instruments in my name or on my behalf.

Power to execute instruments, &c.

X. To EXECUTE and do, or concur in or cause to be executed and done, all such deeds, instruments, and things in relation to the premises as in the absolute discretion of the said [attornies or] attorney shall seem expedient as fully and effectually as I [*or*, we or any one or more of us] could have done if personally present.

General words.

XI. AND GENERALLY to execute and do all such deeds and things in relation to the premises as the said [attornies or] attorney shall think expedient, as fully and effectually as I [*or*, we or any one or more of us] (*a*) could have done if personally present.

Power to appoint substitutes.

XII. AND ALSO from time to time to substitute and appoint any person or persons to act under or in place of the said [attornies or] attorney in all or any of the matters aforesaid, and from time to time every such substitution and appointment at pleasure to revoke.

The same, another form.

XIII. AND THE SAID *principal* hereby empowers his said [attornies or] attorney from time to time, by any attested writing,

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(*a*) If the deed contains recitals, say,
"as the said [*principal*]," *or*
"as the said [*principals*], or any one or more of them, could," &c.

under [their or] his [hands or] hand, to substitute and appoint an attorney or attornies under [them and] him, with the same powers as, or with more limited powers than, are hereinbefore expressed to be hereby given, and from time to time such substitute or substitutes at pleasure to remove, and another or others, by such writing as last aforesaid, to appoint.

Agreement to ratify the said attorney's acts.

XIV. And he the said [*principal*] hereby ratifies and confirms [and covenants to ratify and confirm] whatsoever his said [attornies or] attorney, or [their or] his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents.

The same where there are several principals.

XV. And they the said [*principals*] do and each of them doth hereby ratify and confirm [and jointly and severally covenant to ratify and confirm] whatsoever the said [attornies or] attorney, or [their or] his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents. [*If the power is to be exercised abroad the following clause may be added:* Including in such confirmation whatsoever shall be done between the time of the decease of the said [*principal*] (*b*) or the revocation by other means of these presents, and the time of such decease or revocation becoming known to the said [attornies or] attorney [or their] or his substitute or substitutes.]

Indemnity clause.

XVI. And it is hereby declared, that the attornies for the time being acting under these presents shall be respectively chargeable only with such moneys or property as they shall respectively actually receive, notwithstanding their signing any receipt for the sake of conformity, and shall not be answerable the one for the other of them, nor for the act or default of any substitute, deputy, agent, banker, or broker into whose hands any moneys or property shall come under these presents, nor for any loss whatsoever, unless the same shall happen through their own wilful default respectively.

(*b*) If there are more principals than one, say,
"between the time of the decease of the survivor of the said [*principals*] or, &c."

COMMON FORMS.

Appointment of another attorney in case of the incapacity, refusal, or death, of the original attornies.

XVII. And in case of the death of the said attornies, or either of them, or of their or his inability (through absence, illness [becoming outlawed, bankrupt, or insolvent], or otherwise) or refusal to execute and do such deeds and things or any of them, then I hereby appoint [A. B.], of, &c., to act as my attorney in the stead of the said [C. D.] and [E. F.] [*the original attornies*], or either of them, as the case may require, after such death or during such inability or refusal to act (as the case may be), and so long and so far as such inability or refusal shall continue or extend, unless and until all the powers expressed to be hereby given shall be determined, in like manner as if the name of the said [A. B.] had been inserted in these presents, instead of the names or name of the attornies or attorney so being absent, or becoming unable, or refusing, or dying as aforesaid.

PRECEDENTS.

I. POWER *of* Attorney *to* Execute *an* Indenture (*c*).

KNOW ALL MEN by these presents, that I [*principal*], of, &c., do hereby appoint [*attorney*], of, &c., my attorney, for me and in my name, and as my act and deed, to sign, seal, and deliver a certain indenture already prepared and intended to be dated the —— day of ——, 19—, and to be made between me, of the one part, and [A. B.], of, &c., of the other part; whereby certain freehold messuages and hereditaments, situate at ——, in the county of ——, and known as ——, are or are intended to be conveyed by me to the said [A. B.], by way of mortgage to secure the payment of a sum of £——, and interest thereon at the rate of —— per cent. per annum, as therein mentioned, and to receive from the said [A. B.] the sum of £——, being the sum by the said indenture expressed to be paid to me, and also from time to time to appoint any substitute or substitutes to act under or in place of the said attorney in all or any of the matters aforesaid, and from time to time every such appointment at pleasure to revoke. And I the said [*principal*] hereby ratify and confirm, and agree to ratify and confirm, whatsoever the said attorney, or

Power to appoint substitutes.

Ratification of acts of attorney, &c.

(*c*) Stamp, 10*s*.

his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents.

I. TO EXECUTE INDENTURE.

[PROVIDED ALWAYS, that these presents shall be irrevocable for a period of —— calendar months from the date hereof] (*d*).

Proviso, making power irrevocable for a period.

IN WITNESS, &c. (*e*).

II. POWER *of* ATTORNEY *to* SURRENDER COPYHOLDS.

KNOW ALL MEN BY THESE PRESENTS (*f*), that I [*principal*], of, &c., one of the copyhold or customary tenants of the Manor of ——, in the county of ——, do hereby appoint [*attorney*], of, &c., my attorney for me and on my behalf to appear at the next or some subsequent general Court to be holden for the said manor, or before the lord or lady, lords or ladies, or his, her, or their steward or deputy steward for the time being out of Court, and to surrender into the hands of the said lord or lady, or lords or ladies, either personally or by the hands and acceptance of the

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(*d*) See C. A. 1882, s. 9; Preliminary Note, *ante*, p. 136.

(*e*) As to the execution of a deed by attorney in his own name by the authority of the donor, see C. A. 1881, s. 46. The most correct form is thus:

Execution and form of attestation where a deed is executed by attorney.

"A. B. [*the principal*], by C. D. [*the attorney*]."

Or the execution may now be in the following form:

"C. D. [*the attorney*], by the authority of A. B. [*the principal*]."

The deed, of course, should be prepared in the ordinary way in the name of the principal. For the form of attestation, see *ante*, p. 135.

The testimonium may be thus:—"In witness whereof [*attorney*], of, &c., by virtue of a power of attorney under the hand and seal of the said [*principal*], dated the —— day of ——, hath hereunto set the hand and seal of the said [*principal*], the day and year first above written [*or* this —— day of ——]."

Testimonium of a deed executed by attorney.

In the case of registered land the power should run as follows:—

Registered land.

"In my name and as my act and deed to sign and deliver [a charge for £——], already prepared and intended to be dated the —— day of ——, on all the land registered under the Land Transfer Acts, 1875 and 1897, under the heading, District ——, Parish ——, Title No. ——, to [*mortgagee*], of," &c.

(*f*) Stamp, 10*s*.

II. TO SURRENDER COPYHOLDS.

said steward or deputy steward, by the rod, and according to the custom of the said manor, ALL THOSE, &c. [*describe parcels*], to the use of [A. B.], of, &c., his heirs and assigns for ever, according to the custom of the said manor: AND generally to do, perform, and execute all other acts and things as shall be requisite for the purpose of procuring the said [A. B.], his heirs or assigns, to be admitted tenant or tenants of the said premises, and for assuring the same to the use of the said [A. B.], his heirs and assigns for ever, according to the said custom (*g*): AND I hereby ratify and confirm, and agree to ratify and confirm all that my said attorney shall do or cause to be done in or about the premises by virtue of these presents.

[PROVIDED ALWAYS, that these presents shall be irrevocable for the period of —— calendar months from the date thereof.]

IN WITNESS, &c.

III. POWER *of* ATTORNEY *to obtain* ADMITTANCE *to* COPYHOLDS (*h*).

KNOW ALL MEN BY THESE PRESENTS (*i*), as follows:—

1. I [*principal*], of, &c., one of the copyhold or customary tenants of the manor of ——, in the county of ——, hereby appoint [*attorney*], of, &c., for me and on my behalf to appear, &c. [*as in last precedent*], and to take from such lord or lady, lords or ladies, steward or deputy steward, by the rod, and according to the custom of the said manor, admittance to ALL THOSE, &c. [*describe parcels*], to the use of me the said [*principal*], my

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(*g*) In case of a conditional surrender to a mortgagee, add:—"subject to a condition for making void the said surrender if I the said [*principal*], my heirs, executors, administrators, or assigns, shall on the —— day of ——, pay to the said [A. B.] the sum of £——, with interest thereon in the meantime at the rate of £—— per cent. per annum."

In some manors a purchaser may refuse to accept a surrender by attorney: see *Mitchel* v. *Neale*, 2 Ves. Sen. 679.

(*h*) As to the admittance by attorney of infants, married women, or lunatics, see 11 Geo. 4 & 1 Will. 4, c. 65.

(*i*) Stamp, 10*s*.

heirs and assigns, according to the said custom [subject to such right or equity of redemption as shall be subsisting therein by virtue of a conditional surrender of the said — — hereditaments and premises, dated the —— day of ——]. III. TO OBTAIN ADMITTANCE TO COPYHOLDS.

2. I hereby ratify and confirm, and agree to ratify and confirm, all that my said attorney shall do or cause to be done in or about the premises by virtue of these presents. Ratification.

3. These presents shall be irrevocable for a period of —— calendar months from the date hereof. Power to be irrevocable.

In witness, &c.

IV. POWER *of* Attorney *to* Recover *a* Debt (*k*).

KNOW ALL MEN by these presents (*l*), that I [*principal*], of Cheapside, in the City of London, linen merchant, hereby appoint [*attorney*], of Kingston, in the Island of Jamaica, gentleman, my attorney, for me and in my name to demand, sue for and recover all and every sums and sum of money that are or is now due and owing to me from and by [*debtor*], late of the City of London, but now of Kingston aforesaid, esquire (*m*), and on

(*k*) If the debt is to be recovered in a British colony or dependency the execution should be attested by two witnesses, and a declaration by one of the witnesses in support of the claim and as to execution, under sect. 15 of the Statutory Declarations Act, 1835, will be required, for a form of which see *post*, Precedent XIV. p. 165; but in the case of foreign countries and some colonies special formalities are required to authenticate the power. Enquiry as to this should be made from the consulate or the colonial agents, as the case may be.

(*l*) Stamp, 5*s*., if the debt is under 20*l*.; otherwise, 10*s*.

(*m*) Or the debt may be described specifically as—

"All that debt or sum of £——, now due and owing to me from [*debtor*], of, &c., for goods sold and delivered by me to the said [*debtor*], as appears by the bill or account hereunto annexed signed by me." Variation, according to the nature of debt.

Or if the debt arose on a bill of exchange—

"All moneys due and owing to me by virtue of the bill of exchange hereunto annexed, dated the —— day of ——, drawn by me upon, and accepted by the said [*debtor*], for the sum of £——, payable —— months after the date thereof, including as well the principal money mentioned in the said bill, as the interest, commission, and all other charges and expenses which shall have

IV. TO RECEIVE A DEBT IN THE WEST INDIES.

receipt or payment thereof, or of any part thereof, for me and in my name acquittances or other sufficient discharges for the same to make, sign, and deliver, and to do all other lawful acts and things in and about the premises, as effectually as I could do if personally present; and whatsoever the said [*attorney*] shall do, or cause to be done, in or about the premises by virtue of these presents, I the above-named [*principal*] hereby agree to ratify and confirm.

Power to be irrevocable.

[These presents shall be irrevocable for a period of —— calendar months from the date hereof (*mm*).]

In witness, &c.

Signed, sealed and delivered by the said [*principal*], in the presence of [*Two Witnesses*].

[*Principal*] (L. S.)

V. POWER *of* Attorney *to receive a* Legacy (*n*), *with* Power *to* Consent *to an* Abatement *in case of a* Deficiency *of* Assets; *and, if required, to give a* Bond *to the* Executors *to* Refund.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*o*)

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become due thereon, or have been incurred by the non-payment thereof."

Or if the debt is secured by mortgage—

"All moneys due and owing for principal, interest, and costs on the security of a mortgage dated, &c., and made between [*parties*]."

(*mm*) For New South Wales or Queensland, say,

"These presents shall remain in force until notice of my death or of my having revoked the same shall have been received by the said [*attorney*]."

In Victoria no such provision is required: see Victoria Statutes, 54 Vict. 1103, s. 196; Key & Elph. 10th ed. Vol. I. p. 220, note (a).

(*n*) As to whether an executor would be safe in paying a legacy to an attorney with a general power to receive moneys, see *Carr* v. *Eastabrook*, 2 Cox, 390; *Yerbury* v. *Head*, *ibid.* 391; and see *Fell* v. *Jones*, 17 Beav. 521.

(*o*) Stamp, 10*s*.

[*principal*], of, &c., sends greeting: WHEREAS [*testator*], late of, &c., deceased, by his will dated, &c., and proved, &c., gave and bequeathed to the said [*principal*] the sum of 100*l.*, to be paid within the space of twelve months after his decease, and appointed [*executors*], of, &c., executors in trust of his said will: NOW THESE PRESENTS WITNESS, that the said [*principal*] hereby appoints [*attorney*], of, &c., his attorney, for him and in his name to demand and receive of and from the said [*executors*], or either of them, or any other person or persons whom it may concern, the said legacy or sum of 100*l.* so bequeathed as aforesaid to the said [*principal*], together with any interest which may be due for the same, and upon payment of the same legacy and interest to give an effectual receipt and discharge for the same; AND to accept such sum or sums of money in satisfaction and discharge of the same legacy, as the said attorney shall be of opinion (regard being had to the amount of the assets of the said [*testator*]), ought to be paid thereon; AND ALSO for and in the name and as the act and deed of the said [*principal*], if the said attorney shall think proper, and he shall be required so to do, to execute any bond or covenant for the repayment of the said legacy, or of a due proportion thereof, in case the estate and effects of the said [*testator*] shall subsequently to the payment thereof prove insufficient to discharge the debts of the said [*testator*], and also the legacies bequeathed by his said will, in the same rate and proportion as the said legacy shall have been paid; AND ALSO to commence and prosecute any such action or other proceeding for the recovering payment of the same legacy, or any part thereof, as the said [*attorney*] shall think proper; AND ALSO to appear for the said [*principal*] to any action or other proceeding that shall or may be instituted touching the administration of the estate and effects of the said [*testator*], in which the said [*principal*] shall be made defendant, and to defend the same, and generally to take and concur in such proceedings, in regard to any such action as the said [*attorney*] shall deem expedient; AND ALSO to submit any matter or matters connected with the claim of the said legacy, or the administration of the estate of the said [*testator*], to arbitration, and in the name of the said [*principal*] execute and enter into any bond or bonds, covenant or covenants, to abide by and perform the award; AND GENERALLY to do, perform, and execute all matters and things in and about the premises, as fully and

v. TO RECEIVE A LEGACY.

Recital of will.

Testatum.

Power to receive legacy with interest.

To give receipt.

To consent to abatement.

To give bond to refund.

To bring suits.

To defend suits.

To submit to arbitration.

General words.

V. TO RECEIVE A LEGACY.

effectually as the said [*principal*] might or could have done if personally present. [*Power to appoint substitutes, agreement to ratify the acts of the attorney and substitute, and proviso making power irrevocable for a period; see* ante, *Precedent I., p.* 142.]

In witness, &c.

VI. POWER *of* Attorney *by an* Executor *residing* Abroad *to* Prove *a* Will *in this* Country.

In the High Court of Justice.
Probate Division.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*p*), I [*principal*], late of, &c., but now residing at ——, in the kingdom of Italy, send greeting; Whereas [*recite will appointing principal to be executor, death of testator, and probate of his will*]:

Recitals:

Testatum.

NOW THESE PRESENTS WITNESS that I, the said [*principal*], hereby appoint [*attorney*], of No. ——, Lincoln's Inn Fields, London, solicitor, to be my attorney for me and in my name, or otherwise to appear before the Probate Division of the High Court of Justice, or before some other court or judge of competent jurisdiction, and to apply for and procure letters of administration with the said will annexed, of the [real and] personal estate of the said [*testator*], deceased, to be granted and committed to him, either as my attorney or otherwise, until I shall apply for and procure probate of the said will to be granted and committed to me; And, for that purpose, to execute such bond, covenant, or other obligation as shall be required upon the grant of such letters of administration as aforesaid; And generally, for me, and in my name, and on my behalf, to do, perform, execute, and accomplish every other act, deed, matter, and thing whatsoever, which my said attorney shall think necessary or proper to be done, for the purposes aforesaid, during my absence from England, as fully and effectually as I might or would do if personally present [*power to appoint substitutes, and agreement to ratify,* ante, *p.* 142].

Appointment of attorney.

In witness, &c.

(*p*) Stamp, 10*s*.

VII. POWER *of* ATTORNEY *to take out* ADMINISTRATION *of the* PROPERTY *of an* INTESTATE *in* INDIA, *and to* REALISE *the same* (*q*).

VII. BY ADMINISTRATOR TO TAKE OUT ADMINISTRATION OF INTESTATE'S PROPERTY IN INDIA.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*r*), [*principal*], of, &c., sends greeting: WHEREAS [A. B.], late of ——, died on the —— day of ——, 19—, at —— aforesaid, a bachelor

Recital of death of intestate, and kinship of principal.

(*q*) Under the Indian Probate and Administration Act V. of 1881, s. 23, administration of the estate of an intestate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable to the case of such deceased, would be entitled to the whole or any part of such deceased's estate. When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them. When no such person applies, it may be granted to a creditor of the deceased. With regard to the persons entitled to the deceased's estate, the rule in India is the same as in England. By the Succession Act X. of 1865, "Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death." The title to grants of administration of the estate and effects of a deceased person, as regards his immoveable property, wherever his domicile may have been, and as regards his moveable property, if he was domiciled in British India, is regulated by sects. 200—207 of the Act X. of 1865; and under the Act V. of 1881, s. 30 (incorporating sect. 214 of the Act X. of 1865), when a person entitled to administration is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person until the principal shall obtain letters of administration for himself: see sect. 28. The attorney or agent applying for letters of administration must be within the jurisdiction of the Court: *In the goods of Nesbitt,* 4 Beng. L. R. App. 49. "Province," as defined in this Act, includes any division of British India having a Court of the last resort: see sect. 3; but it does not include Assam: *Thakoor Kristo Surma Adhikaree* v. *Basoobel Goshamee,* 12 W. R. 424. By sect. 5 of the same Act, "When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British Dominions, or in a foreign country, and a properly authenticated copy of

To whom administration may be granted.

(*r*) Stamp, 10*s*. The Courts in India do not regard the question as to whether a power of attorney intended to operate in India complies with the Stamp Laws in England: *Re Goods of McAdam,* I. L. R. 23 Calc. 187.

VII. BY ADMINISTRATOR TO TAKE OUT ADMINISTRATION OF INTESTATE'S PROPERTY IN INDIA.

Testatum.

and intestate, seised of and entitled to lands and hereditaments in the Province of ——, in India, and the said [*principal*], as the eldest brother of the said [A. B.], and his sole next of kin (their father being dead), is by the acts in operation in India, entitled to administer the moveable and immoveable property therein of the said [A. B.], deceased: NOW THESE PRESENTS WITNESS, that, in consideration of the premises, he, the said [*principal*], doth hereby appoint [*attorney*] the attorney of him the said [*principal*] for him, and in his name, or in the name of the said attorney, or otherwise, to take all usual and necessary steps to obtain from the proper Court or Courts, office or offices in India, letters of administration limited to the moveable and immoveable property of or to which the said [A. B.] died possessed or entitled in India; AND for him the said [*principal*], and in his name, or otherwise, to give and execute every such bond, covenant, or other obligation, as shall be required, and generally to do all things necessary or expedient for obtaining such letters of administration as aforesaid, or for constituting the said [*principal*] or the said [*attorney*] as his attorney, the administrator of the said moveable and immoveable property, and

Appointment of attorney;

to obtain administration;

to execute bonds, &c.;

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the will is produced, letters of administration may be granted with a copy of such copy annexed." And where the executors are absent from the province, letters of administration, with such copy annexed, may be granted to their agent limited as in the case of an intestacy: see sect. 28. A power of attorney to obtain letters of administration with a copy of the will annexed should therefore be accompanied by an office copy of the will and act of probate exemplified under the seal of the Probate Division of the High Court of Justice. With regard to the authentication of powers of attorney, the Act I. of 1872, sect. 85, enacts that, "The Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any Court, judge, magistrate, British consul, or vice-consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated." The Powers of Attorney Act VII. of 1882, contains provisions with regard to powers of attorney by married women, the deposit of original instruments creating powers of attorney, the execution of instruments under powers of attorney, and payments by an attorney under a power without notice of the death, &c. of the principal. Persons holding general powers of attorney from parties out of the jurisdiction of the Indian Courts, are recognised as agents of such parties for the purpose of entering appearances and making applications, &c. in such Courts on behalf of their principals: see Act XIV. of 1882, ss. 36, 37.

Presumption as to powers of attorney.

the legal representative of the said [A. B.] in India: And also if and when letters of administration of the moveable and immoveable property of the said [A. B.] shall have been obtained, absolutely to sell and dispose of the lands, tenements, and hereditaments which shall form part of the real estate of the said [A. B.] as aforesaid, either together or in parcels, and either by public auction or private contract; And upon any such sale, to buy in or rescind any contract for sale, and to resell without being responsible for any loss occasioned thereby, and to make any such sale as aforesaid, subject to such special or other conditions of sale as the said [*attorney*] shall consider advisable or expedient; and to give credit for the whole or any part of the purchase-money upon such security as the said [*attorney*] shall think proper; and to get in, recover, and receive all debts, whether secured or otherwise, due or owing to the estate of the said [A. B.] in India, and upon payment of any moneys owing to the said estate on mortgage or other security, to execute such reconveyances or releases of the property so mortgaged or charged as may seem proper or expedient; and to pay and discharge all debts and liabilities due or owing from the estate of the said [A. B.] to the Government of India, or to any person, firm, company, or corporation in India; And for the purposes aforesaid, or any of them, to execute and do all such contracts, conveyances, assurances, releases, deeds, matters, and things as the said [*attorney*] shall deem expedient; And the said [*principal*] doth hereby declare, that every receipt in writing of the said [*attorney*] for any money paid to him under these presents, or in the execution of the powers hereof, shall sufficiently discharge the person or persons paying the same therefrom, and from being concerned to see to the application, or being answerable for the loss or misapplication thereof; And the said [*principal*] hereby further authorises and empowers the said [*attorney*], in the name of him the said [*principal*], or otherwise, to commence, prosecute, abandon, defend, and compromise in any court of law, equity, or other judicature in the said Province of ——, or to refer to arbitration all or any proceedings or claims touching the property and liabilities of the said [A. B.], deceased, in India, or any of the matters aforesaid; And also until the sale and conversion into money of the whole of the said premises, to manage and deal therewith as the said [*attorney*] shall think fit, and to

VII. BY ADMINISTRATOR TO TAKE OUT ADMINISTRATION OF INTESTATE'S PROPERTY IN INDIA.

to sell the estate;

to execute conveyances;

to give receipts for purchase-moneys;

to bring and defend actions;

to manage estate till sale;

VII. BY ADMINISTRATOR TO TAKE OUT ADMINISTRATION OF INTESTATE'S PROPERTY IN INDIA.

appoint agents and employ servants for the purposes aforesaid, or any of them, on such terms and with such salaries, wages, and allowances as the said [*attorney*] shall deem proper; AND the said [*principal*] doth hereby further authorise and empower the said [*attorney*], in the name of him the said [*principal*], and as his act and deed, to acknowledge this present power of attorney, and to register and record the same in the proper office, and to execute, make, and do every such other deed, act, matter, or thing whatsoever, which may be necessary or expedient for the purpose of giving validity or effect to this present power of attorney, according to the laws and usages of India, or of any part thereof; AND GENERALLY for the said [*principal*], and in his name or otherwise, to do everything requisite or convenient for all or any of the purposes aforesaid, as fully and effectually as the said [*principal*] himself could do if personally present; AND the said [*principal*] hereby ratifies, confirms, and allows and covenants to ratify, confirm, and allow, whatsoever the said [*attorney*] shall do or cause to be done in or about the premises, by virtue of these presents. AND the said [*principal*] hereby declares that this power of attorney shall be irrevocable for [twelve] calendar months from the date hereof.

to register the power.

General words.

Agreement to ratify.

IN WITNESS, &c. (*s*).

VIII. POWER *of* ATTORNEY *by* TWO DEVISEES *and* EXECUTORS *in* ENGLAND, *authorising certain* PERSONS *in a* COLONY *to* TAKE POSSESSION *of and* RECEIVE *the* PROPERTY *and* DEBTS *of the* TESTATOR *there* (*t*).

TO ALL TO WHOM THESE PRESENTS SHALL COME (*u*), [*principal*], of, &c., and [*principal*], of, &c., send greeting.

(*s*) This power must be executed before and authenticated by a notary or other qualified person: see *ante*, note (*q*), p. 150.

(*t*) Stamp, 10*s*.

(*u*) The above power may be adapted with slight alteration to the case of property in India or in any foreign country. An English will is proved in India by production of an office copy of the will and act of probate exemplified under the seal of the Probate Division: see *ante*, p. 150, note (*q*).

VIII. BY EXECUTORS TO TAKE POSSESSION OF PROPERTY, &C.

Recitals: of will appointing principals, trustees, and executors thereof;

WHEREAS [A. B.], late of, &c., deceased, duly made and executed his will dated the —— day of ——, 19—, and thereby devised all his real estate whatsoever and wheresoever to the said [*principals*], their heirs and assigns, upon the trusts therein mentioned, and appointed the said [*principals*] to be the executors of his said will.

of death of testator, and probate of will;

AND WHEREAS the said [A. B.] died on the —— day of ——, 19—, without having revoked or altered his said will, and the same was on the —— day of ——, 19—, duly proved in the Principal Probate Registry of the High Court of Justice by the said [*principals*].

that part of property is in the colony.

AND WHEREAS part of the real estate of the said [A. B.] is situate in or about ——, in the colony of —— (*x*), and part of his personal estate is there outstanding.

Testatum.

NOW THESE PRESENTS WITNESS that the said [*principals*] do, and each of them doth, hereby appoint [*attorneys*], of, &c., and any one or more of them, jointly and severally, the attorneys and attorney of them and each of them, for them and each of them, and in the names and name of them and each of them, as such devisees and executors as aforesaid, or in the names or name of the said attorneys, or any one or more of them, or otherwise as the case shall require, for the following purposes:—

Principals, as devisees and executors, appoint attorneys jointly and severally.

To obtain administration with the will annexed.

1. To take all usual and necessary steps to obtain from the proper Court or Courts in the colony of —— aforesaid letters of administration with the said will of the said [A. B.] annexed, limited to the moveable and immoveable property of or to which the said [A. B.] died possessed or entitled in the said colony; AND for them the said [*principals*], and in their names or otherwise, to give and execute every such bond, covenant, or other obligation as shall be required, and generally to do all things necessary or expedient for obtaining such letters of administration as aforesaid, or for constituting the said [*principals*], or the said [*attorneys*], as their attorneys, administrators with the will annexed of the said moveable and immoveable property, and the legal representatives of the said [A. B.] in the said colony.

(*x*) Australia is now "the Commonwealth of Australia"; New Zealand, "the Dominion of New Zealand"; Canada, "the Dominion of Canada": see, as to the various colonies, &c., Anson's Law and Customs. "The said Commonwealth" or "the said Dominion" must be substituted for "the said Colony" where necessary.

VIII. BY EXECUTORS TO TAKE POSSESSION OF PROPERTY, &c.

2. When letters of administration of the moveable and immoveable property of the said [A. B.] shall have been obtained, to demand, take and receive possession and seisin of all and every the [plantations], lands, hereditaments, and real and personal estate whatsoever, in ——, now vested in or belonging to the said [*principals*], as the real and personal representatives of the said [*testator*], deceased, or wherein or whereto they as such devisees and executors as aforesaid, or otherwise howsoever, or either of them have or has any estate, right, title, or interest. AND ALSO of all live and dead stock, utensils, and implements to the said [plantations], lands and hereditaments, or any of them, belonging or appertaining.

To take possession of testator's real and personal estate in the colony.

3. To take upon themselves or himself the whole management or direction of the said [plantations], lands and hereditaments, and to receive and take the rents, issues, and profits thereof, and of every part thereof, and to pay and defray all necessary charges and expenses in and about the said [plantations], lands, hereditaments, and premises, and the supplying and keeping up the stock thereof respectively, and to remit and consign to them the said [*principals*] the produce and profits thereof, or otherwise to dispose thereof in such manner as they shall from time to time direct.

And to receive the rents and pay all charges.

4. To ask, demand, sue for, recover, and receive of and from all and every persons and person in or belonging to the said colony, whom it doth or shall or may concern, all arrears of rent and sums of money, debts, goods, merchandise, and effects whatsoever, now due, owing and payable, or belonging, or which shall or may at any time or times hereafter become due, owing, payable, or belonging to them the said [*principals*], as such devisees and executors as aforesaid, or otherwise howsoever, or to either of them.

Also to receive and recover debts owing to the testator.

5. To sign, seal, execute, and deliver such receipts, releases, acquittances, or other sufficient discharges as shall be thought requisite for all or any such moneys and effects as aforesaid.

And to give discharges.

6. To examine, settle, adjust and balance all accounts which now are, or shall or may at any time hereafter be open or depending between the said [*principals*], as such devisees and executors as aforesaid, or either of them, and any other person or persons in or belonging to the said colony, and to receive and pay (as the case may require) the balances thereupon found due.

To adjust accounts.

VIII. BY EXECUTORS TO TAKE POSSESSION OF PROPERTY, &C.

7. To compromise or refer to arbitration, or otherwise compound all or any matters in difference between the said [*principals*], as such devisees and executors as aforesaid, or either of them, and all and every other person and persons whomsoever, in or belonging to the said colony, and to perform and fulfil such award or awards, agreement or agreements, as shall be thereupon made. To compromise and refer to arbitration.

8. In the name or names of the said [*principals*], or either of them, and as their or his act and deed to acknowledge this power of attorney, and register and record the same in the proper office in the said colony, and do or procure to be done every thing which may be required for authenticating and giving effect to this power according to the laws of the said colony.

9. And generally to do, perform, and execute all such further and other acts, deeds, matters, and things as shall be requisite or necessary in or about the premises, or any part thereof, in as full, effectual, and beneficial a manner, as the said [*principals*], or either of them, might or could do, if they were personally present. General words.

10. And also from time to time to substitute and appoint any person or persons to act under or in place of the said attorneys or attorney, in all or any of the matters aforesaid, and from time to time such substitution and appointment at pleasure to revoke. To appoint substitutes.

And they the said [*principals*] hereby confirm and ratify, and agree to confirm and ratify whatsoever their said attorneys or attorney, or their or his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents. Agreement to ratify.

In witness, &c. (*y*).

(*y*) For declaration by witness and certificate of notary verifying the execution of this deed, see *post*, Precedents XV. and XVI., pp. 166 and 167.

IX. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &c.

IX. POWER *of* ATTORNEY *from a* PERSON *having large* ESTATES *in* ENGLAND, *previously to his going* ABROAD, *containing very* EXTENSIVE *and* SPECIAL POWERS *to* DEMISE *and* MANAGE ESTATES, APPOINT BAILIFFS, *exercise* POWERS *of* ENTRY, &c., *in* LEASES, PROCEED *against* TENANTS, &c.; COLLECT RENTS, SETTLE DEBTS, BRING ACTIONS, *refer to* ARBITRATION, SELL, MORTGAGE, *or* CHARGE *the* ESTATES *in* GREAT BRITAIN, *and* OTHERWISE *to* ACT *in his* CONCERNS (*z*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*principal*], late of the Island of Saint Vincent, but now of ——, in the county of ——, in England, esquire, send greeting.

Recitals.

WHEREAS I, the said [*principal*], am seised and possessed of or otherwise entitled to certain freehold and leasehold farms, lands, and hereditaments, and personal estate and effects in England, and several persons residing in England are indebted to me in various sums of money.

AND WHEREAS I am now about to leave England and to reside in ——, and am desirous of appointing a proper person as my attorney, with such powers and authorities as may be necessary or convenient for enabling him, during my absence (*a*) from England, to manage and conduct my property and affairs as effectually as if I were personally present.

Testatum.

NOW THEREFORE KNOW YE, as follows:—

Appointment of attorney.

1. I, the said [*principal*], hereby appoint [*attorney*], of, &c., esquire, my attorney for me, and in my name and on my behalf or otherwise to do all or any of the things following, that is to say:—

To let or manage estates,

(1) To take possession of, let and demise or, if he shall think proper, to keep in his own hands, manage, cultivate, and improve my freehold and leasehold messuages, farms, lands, and hereditaments, in —— and elsewhere in Great Britain; and, in particular, to cut timber or underwood, work quarries or mines (whether now open or not), erect, pull down, or repair houses or buildings, fences, and other erections, make drains and roads, and dedicate

(*z*) Stamp, 10*s*.

(*a*) As to the effect of a recital limiting the duration of the power, see *Danby* v. *Coutts & Co.*, 29 Ch. D. 500.

any roads, when made, to the public, insure houses and other property against loss or damage by fire, and execute any works which may be required by any public or local authority; and from time to time to appoint any bailiff, stewards, or agents, to assist him in managing the same, with such salaries or allowances as he shall think reasonable; and from time to time to displace or remove the persons so appointed, or any person or persons now acting in any such capacity or capacities, and to appoint another or others.

IX. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &C.

appoint bailiffs, &c.

(2) To accept surrenders of leases and tenancies.

(3) To execute and do all such assurances and things as he my said attorney shall think expedient for granting, demising, or letting all or any of the said freehold and leasehold messuages, farms, lands, and hereditaments, from year to year or for any term of years or other interest, in consideration of any fine or fines or without fine, and under and subject to such conditions, rents, covenants, and agreements, as my said attorney shall think fit; AND ALSO by virtue of any powers reserved to me in and by any leases under which the said premises may from time to time be held, or otherwise, to enter into and upon the said premises or any part thereof, to view and examine the state and condition thereof, and give the proper notices and directions respecting the repairs and cultivation of the same; or, if my said attorney shall deem expedient, by entry or otherwise wholly to determine and make void any such lease or leases by virtue of any power or powers therein contained, and generally to exercise all or any other powers, rights, and privileges, reserved to me in and by any such leases.

To execute leases, &c.

To enter by virtue of powers in leases.

To determine leases.

(4) From time to time to demand, sue for, recover, and receive and give effectual receipts and discharges for all the rents and profits which now are or hereafter shall be due, owing, or arising for or in respect of my said freehold and leasehold estates in Great Britain (making such allowances and deductions thereout as may lawfully or reasonably be claimed); AND ALSO all other sums of money, securities for money, legacies, debts, goods, chattels, and personal effects and things whatsoever (*b*), to which I am now or hereafter shall be entitled.

To receive and give receipts for rents.

And all other debts and effects.

(*b*) This power will not enable the attorney to receive dividends on stock in the public funds, for which a power must be obtained at the Bank of England.

IX. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &C.

In case of non-payment of rent to distrain.

To commence actions for rents or other moneys.

(5) To enter and distrain for all or any part of the said rents or arrears of rent, and to commence such actions or other proceeding or proceedings as my said attorney shall deem proper to compel the payment or delivery of all or any of the said rents, arrears of rent, issues and profits, sums of money, debts, legacies, goods, chattels, effects, and things, or any part or parts thereof respectively, or to enforce the performance of any covenant or covenants contained in any indenture of lease, granted or to be granted, of my said estates, or any part thereof, or to recover the possession of the said estates or any part thereof; and the same actions or proceedings respectively to prosecute or to discontinue, or to become nonsuited or otherwise to act therein as my said attorney shall deem expedient.

To settle accounts.

(6) To settle and adjust all accounts, reckonings, and demands whatsoever, between me and any person or persons whomsoever.

To prove debts in bankruptcy.

(7) And also, in case any person or persons who is, or are, or shall be indebted to me, shall become a bankrupt or bankrupts, to prove such debt or debts and receive the dividend or dividends payable in respect thereof.

To compound debts and refer to arbitration.

(8) To compound, compromise, and submit to arbitration and adjust all debts, claims, demands, and disputes subsisting or to arise between me and any other person or persons whomsoever; And for that purpose to execute and do all such instruments and things as the said [*attorney*] shall think expedient.

To appear to and defend actions.

(9) To appear for me in any action or legal proceedings brought or prosecuted against me, or whereunto I shall be a party, and to defend the same, or therein to suffer judgment or decree to be taken or pronounced against me by default or otherwise, as my said attorney shall think proper.

To make arrangements with creditors.

(10) To enter into any agreement with any person or persons to whom I am or shall be indebted, touching the payment or liquidation of my debt or respective debts to him or them, or any part thereof respectively.

To borrow moneys.

(11) For me and on my behalf to borrow and take up at interest, upon the security of all or any part of my real or personal estate in Great Britain, any sum or sums of money my said attorney shall think proper.

And to mortgage or sell real and personal estate.

(12) And also, if and when my said attorney shall think expedient, to sell and absolutely dispose of all or any of my freehold and leasehold estates, goods, chattels, and effects in Great

IX. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &c.

Britain (whether the same shall have been previously mortgaged or not), together or in parcels, and either by public auction or private contract, for such price or prices (including, in the case of a grant in fee, a perpetual rentcharge), as to my said attorney shall seem reasonable [with power to give credit for the whole or any part of the purchase-money thereof, and to permit the same to remain unpaid for such time and upon such security as my said attorney shall think proper].

To execute mortgages and conveyances.

(13) And for all or any of the purposes herein mentioned, to execute and do all such mortgages, conveyances, assurances, and things as shall be required, and as my said attorney shall think proper; and to receive and give effectual receipts for all or any the sum or sums of money which shall arise from any such sale or sales as aforesaid, or which shall be so borrowed as aforesaid, or which shall otherwise come into the hands of my said attorney by virtue of the powers hereinbefore contained.

To give receipts for purchase-moneys and moneys borrowed.

Out of moneys received, in the first place to pay expenses:

(14) And by or out of such moneys as shall from time to time come to the hands of my said attorney, by virtue of any of the powers or authorities aforesaid, to pay and discharge, in the first place, all [the expenses of preparing, engrossing, and executing these presents, and all other] (*c*) costs, charges, damages, and expenses which my said attorney shall pay, or become liable to, in or about the execution of the powers vested in or given to him by these presents, or in anywise relating thereto. And, in the next place,

And then to pay debts and keep down interest, &c.

to pay and discharge any debt or debts which is, or are, or shall be owing from me, or such of them or such part thereof as my said attorney shall think proper, or to apply the same, or such part thereof as he in his discretion shall think necessary, in keeping down the interest due or to grow due on any securities given or hereafter to be given by me or by my said attorney by virtue hereof; And also, for such other purposes, and in such other manner, as I shall from time to time, by any writing under my hand, direct or appoint, or otherwise to dispose of the same for my use and benefit as he shall think fit.

Attorney to perform all other necessary acts respecting property and concerns of constituent.

(15) And generally to execute and do all instruments, acts, and things which my said attorney shall think necessary or proper to be executed or done in relation to the premises during my absence from England, as effectually as I might or could do if personally present.

(*c*) The words in brackets might be useful where the principal is unable for any reason to pay these expenses before leaving England.

IX. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &c.

Appointment of substitute.

2. In case of the death of the said [*attorney*], or of his inability (temporary or permanent) or unwillingness to act as my attorney in respect of the matters aforesaid, or any of them, then I appoint [*substitute*], of, &c., to act as my attorney in the place of the said [*attorney*] after his death, or at any time, or from time to time, during the subsistence of any such inability or unwillingness (as the case may be), unless and until these presents shall be revoked or determined in like manner as if the name of the said [*substitute*] had been inserted in these presents instead of the said [*attorney*].

Agreement to ratify.

3. And I hereby ratify and confirm, and agree to ratify and confirm, whatever the said [*attorney*], or the said [*substitute*], when acting as such substitute as aforesaid, shall do or cause to be done in or about the premises by virtue of these presents.

In witness, &c.

X. POWER *of* Attorney *by* Person *going* Abroad. (Short Form) (*c*).

Appointment of attorney.

KNOW ALL MEN by these presents, that I [*principal*], of, &c., shortly going abroad, hereby appoint [*attorney*], of, &c., my attorney for me in my name and on my behalf,

To let and manage freeholds, &c.

1. To let and manage all freehold, copyhold, and leasehold property now or hereafter belonging to me or purchased by my attorney.

To receive rents, &c.

2. To receive and compel payment of the rents and profits of such freehold, copyhold, or leasehold property.

To receive debts, money and other property.

3. To demand, sue for, or prove in any bankruptcy, liquidation, composition, winding-up, or administration for any money, chattels, or other property now or hereafter belonging or coming to me: And to receive the same.

To draw cheques.

4. To draw cheques in my name on my current account with Messrs. ——.

To indorse cheques, &c.

5. To indorse or sign my name to any cheques, warrants, or other instruments payable to me.

To alter and give directions as to payment of dividends, &c.

6. To give, renew, or withdraw authorities or directions to bankers or others as to the manner in which any money payable to me shall be paid (*cc*).

To enforce or settle accounts, &c.

7. To enforce, resist, allow, remit, set off, settle, compound, compromise, or refer to arbitration any accounts, disputes, claims,

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(*c*) Stamp, 10*s*.

(*cc*) See p. 157, note (*b*).

actions, or proceedings in which I may be concerned or interested, and pay any money which my attorney may consider to be due from me. X. BY PERSON GOING ABROAD.

8. To give receipts, releases, and indemnities for or in respect of any money or property paid or delivered or transferred to my attorney by virtue of these presents. and pay debts. To give receipts, releases, &c.

9. To invest any moneys received by my attorney by virtue of these presents in the purchase or on the security of freehold, copyhold, or leasehold property, or the stocks, shares, bonds, or debentures of any companies or public bodies, and to sell or vary such investments. To invest purchase and other moneys.

10. To employ agents for any of the purposes aforesaid, and to pay to them such remuneration for their services as my attorney shall think proper. To employ agents.

And I hereby ratify and confirm, and agree to ratify and confirm, whatever my attorney shall do or cause to be done in or about the premises by virtue of these presents. Ratification.

IN WITNESS, &c.

XI. POWER *of* ATTORNEY *empowering a* CREDITOR *to* RECEIVE *the* RENTS *of* FREEHOLD HOUSES, *by way of* SECURITY *for a* LOAN.

THIS INDENTURE (*d*), made the —— day of ——, BETWEEN [*principal*], of, &c., of the one part, and [*creditor*], of, &c., of the other part: WHEREAS the said [*principal*] is seised of, or entitled to two several messuages, situate in —— Street, in the parish of ——, in the county of ——, being Nos. —— and —— in the said street, for an estate in fee simple in possession free from incumbrances, which said several messuages have been let by the said [*principal*] to the several persons, and at the several yearly rents following, that is to say, No. ——, in —— Street aforesaid, to [A. B.], as tenant from year to year, at the yearly rent of £——; and No. ——, in —— Street aforesaid, to [C. D.], by an indenture of lease, dated the —— day of ——, 19—, for twenty-one years from the —— day of ——, 19—, at the yearly rent of £——: AND WHEREAS the said [*creditor*] has agreed to Parties. Recitals: of principal's title.

(*d*) Stamp, *ad valorem*, as a mortgage in respect of the amount of the advance.

XI. TO RECEIVE LEASEHOLD RENTS.

lend to the said [*principal*] the sum of £——, at interest, on the security of the rents of the said two several messuages, to be received by him the said [*creditor*] as hereinafter expressed: NOW

Testatum.

THESE PRESENTS WITNESS as follows:—

1. In pursuance of the said recited agreement, and in consideration of the sum of £—— paid by the said [*creditor*] to the said [*principal*] (the receipt whereof the said [*principal*] doth hereby acknowledge), the said [*principal*] hereby

Appointment of attorney.

irrevocably (*e*) appoints the said [*creditor*], his executors or administrators (*f*), the attorney and attornies of him the said [*principal*], for him and in his name or otherwise to receive and recover from the tenants and occupiers of the said two messuages

To receive the rents.

respectively, ALL THOSE several yearly rents of £—— and £——, so respectively reserved and made payable to the said [*principal*] out of, or in respect of, the same messuages; AND all moneys now due, or hereafter to become due, in respect of the same rents or

To give receipts.

either of them, and to give effectual discharges for the same, exonerating the persons paying such rents respectively from all responsibility in respect of the application thereof; AND, for the

To distrain.

purposes aforesaid, to levy and make such distresses and entries upon the said premises, and to do and execute all such other acts, matters and things as may be expedient for compelling and

To substitute.

enforcing payment of the said rents, and to appoint, from time to time, a substitute or substitutes for all or any of the purposes aforesaid, and from time to time every such substitution at

Agreement to ratify.

pleasure to revoke; the said [*principal*] hereby agreeing to ratify and confirm whatsoever the attorney or attornies, or his or their substitute or substitutes, shall lawfully do, or cause to be done, in or about the premises.

Covenants by principal to repay mortgage moneys.

2. The said [*principal*] hereby covenants with the said [*creditor*] to pay unto the said [*creditor*], his executors, administrators, or assigns, on the —— day of —— next, the sum of £——, with interest for the same in the meantime at the rate of —— per cent. per annum: And also, that he the said [*principal*], his executors or administrators, so long as any principal moneys shall remain owing, by virtue of these presents, will pay to the said [*creditor*], his executors, administrators, or assigns, interest for the same at the rate aforesaid, by equal half-yearly payments on the —— day of

(*e*) See C. A. 1882, s. 8.

(*f*) As to the effect of a power given to the donee, "his executors or administrators," see Key & Elph., 10th ed. vol. i. p. 207.

—— and the —— day of —— in every year; AND that the said [*principal*], his executors or administrators, will not prevent or hinder the said [*creditor*], his executors or administrators, from receiving the rents and moneys so to be received by him or them as aforesaid, but will, on the request of the said [*creditor*], his executors, administrators, or assigns, and at the cost of him the said [*principal*], his executors or administrators, make, do and execute all such further acts, deeds and authorities as shall be requisite for authorising and empowering the said [*creditor*], his executors or administrators, to receive the said rents and moneys, so long as any part of the principal sum intended to be hereby secured, or of the interest thereon, shall remain owing to him or them, as by the said [*creditor*], his executors, administrators, or assigns, shall be reasonably required.

XI. TO RECEIVE LEASEHOLD RENTS.

And not hinder attorney from receiving rents.

For further assurance.

3. IT IS HEREBY DECLARED AND AGREED, that the said [*creditor*], his executors, administrators and assigns, shall stand possessed of the said rents and moneys so to be received by him and them as aforesaid, UPON TRUST thereout, in the first place, to pay the rates and other outgoings which shall, from time to time, be payable in respect of the said premises; AND, in the next place, UPON TRUST, from time to time to retain to and reimburse himself and themselves the said sum of £—— advanced by the said [*creditor*] to the said [*principal*] as aforesaid, or so much thereof as shall for the time being remain unpaid, with interest thereon at the rate of —— per cent. per annum from the date hereof to the time or respective times of the repayment of the same; AND after full payment and satisfaction of the said principal and interest moneys, and of all costs and expenses attending the execution of this present trust, UPON TRUST, to pay over unto the said [*principal*], his executors, administrators, or assigns, any moneys which shall remain in the hands of the said [*creditor*], his executors, administrators, or assigns, unapplied to the purposes aforesaid.

Declaration of trusts of moneys.

To pay rates and outgoings.

To retain mortgage-moneys and trust expenses.

To pay over balance.

4. IT IS HEREBY DECLARED AND AGREED, that when the said principal and interest moneys, costs and expenses shall have been fully satisfied, the said [*creditor*], his executors, administrators, or assigns, on the request of the said [*principal*], his executors, administrators, or assigns, shall deliver to him or them this present power of attorney to be cancelled.

Delivery up of the power of attorney in satisfaction of the debt, &c.

IN WITNESS, &c.

XII. APPOINTMENT by Attorney of Two Persons as Substitutes, by Virtue of an Authority in the Power of Attorney.

XII. APPOINTMENT OF SUBSTITUTES UNDER A POWER OF ATTORNEY.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*g*), [*appointor*], of, &c. (hereinafter called "the appointor"), sends greeting: WHEREAS [*principal*], of, &c., duly made and executed under his hand and seal a certain deed poll or power of attorney, dated the —— day of ——, whereby the said [*principal*] appointed the appointor his attorney, for him and in his name [*recite power, including the authority to appoint a substitute*]: NOW THESE PRESENTS WITNESS, that the appointor, by virtue and in execution of the authority in that behalf contained in the said power of attorney, and of all other authorities him thereunto enabling, doth hereby appoint [*two attornies*], of, &c., and each of them, to be the attornies and attorney, jointly and separately, of the said [*principal*], for him and in his name, or in the name of the appointor, to execute and perform all and every the authorities, matters, and things mentioned and contained in the said deed poll or power of attorney, in the same manner, and as fully and effectually, as he the said [*principal*], or as the appointor might or could have done if personally present, and as they the said [*attornies*], or either of them, might or could have done if they had been appointed the attornies jointly and severally of the said [*principal*], in and by the said deed poll or power of attorney, in the stead of the appointor, the appointor hereby confirming and agreeing to confirm whatsoever the said [*attornies*] jointly, or either of them separately, shall do or cause to be done in and about the premises by virtue of these presents or of the said deed poll.

Recital of power of attorney, with power to appoint substitutes.

Testatum.

Appointment of substitutes.

Agreement to ratify.

IN WITNESS, &c.

(*g*) Stamp, 10*s*.

XIII. DEED *of* REVOCATION *of a* POWER *of* ATTORNEY (*h*).

XIII. REVOCATION OF POWER OF ATTORNEY.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*i*), I [A. B.], of, &c., send greeting: WHEREAS, by a certain deed poll or power of attorney under my hand and seal, dated the —— day of ——, I appointed [C. D.], of, &c., my attorney, for me and in my name [*recite power*]: NOW KNOW YE, that I, the said [*principal*], do by these presents absolutely revoke the said deed poll or power of attorney, and every power and authority expressed to be thereby given: PROVIDED NEVERTHELESS, that nothing herein contained shall impeach or invalidate any act which the said [*attorney*], or any substitute or substitutes acting under him, shall lawfully do or cause to be done by virtue of any power or authority expressed to be given by the said power of attorney, before the revocation thereof by these presents shall have been made known to the said [*attorney*], or to his substitute or substitutes.

Recital of powers.

Testatum.

Revocation of power.

IN WITNESS, &c.

XIV. DECLARATION *to* ACCOMPANY *a* POWER *of* ATTORNEY *to* RECOVER *a* DEBT *in a* BRITISH COLONY *or* DEPENDENCY (*k*).

I [A. B.], of Cheapside, in the City of London, clerk to [*creditor*], of the same place, linen merchant, do solemnly and sincerely declare that the several goods and articles mentioned in the bill or account hereunto annexed, signed by the [*creditor*], were to my knowledge supplied and furnished by the said creditor to [*debtor*], now of Kingston, in the Island of Jamaica, but late of the City of London, esquire, by the order and at the request of the said

Declaration to accompany power.

(*h*) Where the letter of attorney is under seal, the revoking instrument should also be under seal. But this is not absolutely necessary. If an interval must necessarily elapse before the revocation is communicated to the attorney (which will happen if he reside at a distance), it may be well, though perhaps not strictly necessary, to add a qualification to the effect in the text.

(*i*) Stamp, 10*s*.

(*k*) See the Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), and the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 21. Stamp, 2*s*. 6*d*.: see Stamp Act, 1891, sched. *tit.* "Affidavit and Statutory Declaration."

XIV. DECLARATION AS TO DEBT, TO ACCOMPANY POWER OF ATTORNEY.

[*debtor*] (*l*), and also that I verily believe that the sum of £——, the amount of the said bill or account, is now justly due and owing from the said [*debtor*] to the said [*creditor*]: And I further solemnly and sincerely declare that on the —— day of ——, I the said [*declarant*] and [*the other attesting witness*], of, &c., were present together and did see the said [*creditor*] duly sign, seal, and, as his act and deed, deliver the power of attorney dated the —— day of —— hereunto annexed, and that the name [*creditor's signature*] appearing to be thereunto subscribed, is of the proper handwriting of the said [*creditor*], and that the names [A. B.] and [C. D.], thereunto also subscribed as witnesses attesting the execution thereof, are of the respective proper handwritings of me the said [*declarant*] and the said [*other witness* (*m*)]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at the Guildhall, London, the —— day of ——, 19—, before me,

X. Y. [*Mayor*].

XV. DECLARATION *of* Attesting Witness *to a* Power *of* Attorney (*n*).

Declaration.

I, [A. B.], of, &c., do solemnly and sincerely declare, that on the —— day of ——, 19—, I and [*other witness*], of, &c., were present together and did see [*principal*], of, &c., sign, seal, and, as his act and deed, deliver, the power of attorney hereunto annexed, and that the name [*principal's signature*] appearing to be subscribed

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(*l*) If the witness cannot speak to the fact of the goods having been supplied, instead of the above statement, say,

"That the bill or account hereto annexed, signed by the said [*creditor*] is a just and true transcript or copy of a bill or account as appearing in the books of the said [*creditor*]."

(*m*) In order to avoid the necessity of having more than one declaration, the person speaking to the fact that the debt is due should be one of the attesting witnesses to the power of attorney, and should make the declaration of its execution.

(*n*) Stamp, 2*s*. 6*d*.

XV. DECLARATION OF WITNESS.

thereto, as the name of the party executing the same, is of the handwriting of the said [*principal*], and that the names [A. B.] and [C. D.] respectively appearing to be subscribed thereto, as the names of the attesting witnesses to the execution of the said power of attorney, are of the respective handwritings of me, the said [*declarant*], and the said [*other witness*]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at ——, in the city of ——, [*or*, borough of ——, in the county of ——], this —— day of ——, 19—, before me [X. Y.], Mayor [*or*, Notary Public].

XVI. CERTIFICATE *of* Mayor *or* Notary Verifying *preceding* Declaration (*o*).

Certificate.

TO ALL TO WHOM these presents shall come (*p*), I, [*mayor*], Mayor of the city of ——, [*or*, borough of ——], in the county of ——, [*or*, Notary Public, duly admitted and sworn of ——, in the county of ——], in pursuance of the Statutory Declarations Act, 1835 (*q*), do hereby certify, that, on the day of the date hereof, personally came and appeared before me [A. B.], of, &c., the person named in the declaration hereunto annexed, being a person well known and of good credit, and by declaration, which the said [A. B.] then made before me, did solemnly and sincerely declare and testify to be true the several matters and things mentioned and contained in the said annexed declaration.

(*o*) The trouble and expense of a declaration and mayor's certificate may be saved by executing the power of attorney in the presence of a person who is about to proceed to the island in which the instrument is to be used, and who can make the necessary deposition there; but where the declaration embraces other objects, which make the certificate, &c. necessary at all events, nothing is gained by this expedient.

(*p*) By the Stamp Act a notarial act (with certain exceptions) is charged with a duty of 1*s.*: see Stamp Act, 1891, sched. *tit.* "Notarial Act."

(*q*) See the Statutory Declarations Act, 1835, ss. 15, 16.

XVI. CERTIFICATE OF MAYOR OR NOTARY.

In faith and testimony whereof, I, the said Mayor [Notary Public] have caused the seal of the office of Mayoralty of the said city [*or*, borough] of —— [*or*, my notarial seal of office], to be hereunto put and affixed, and the power of attorney mentioned in the said declaration to be hereunto annexed. Dated at the city [*or*, borough] of —— aforesaid, the —— day of ——, 19—.

[*Mayoralty or Notarial Seal.*]

X. Y., *Mayor of* ——.
[*or*, Notary Public].

BONDS.

PRELIMINARY NOTE.

It was never necessary that executors or administrators should be expressly named in a bond or obligation under seal; but prior to the Conveyancing Act, 1881, it was necessary that the heirs should be so named, otherwise they were not chargeable. Now, however, by virtue of sect. 59 of the Conveyancing Act, 1881, all bonds or obligations under seal, made upon or after the commencement of the Act, bind the heir or devisee though the heir be not expressly mentioned.

Under sect. 60 of the same Act, a covenant or bond or obligation under seal, made with two or more jointly, enures for the benefit of the survivor or survivors of them; and by sect. 61, the receipt of the survivors or last survivor is a complete discharge. In the case, therefore, of a bond or obligation with two or more obligees, the words of survivorship may be omitted. As to payment to one of joint obligees, see *Steeds* v. *Steeds*, 22 Q. B. D. 537; *Powell* v. *Brodhurst*, [1901] 2 Ch. 160. Nothing can be recovered on the bond beyond the penalty. (*Harris* v. *Harris*, [1892] A. C. 547.)

Though the heir or devisee is bound by the bond or obligation under seal, proceedings against him cannot be effectually taken if the covenantor died after 1897, until the property has been

conveyed to the heir, or the devise has been assented to by the personal representative under the Land Transfer Act, 1897, s. 3.

The following are the provisions as to stamp duties on bonds contained in the schedule to the Stamp Act, 1891:—

	Duty. £ s. d.
BOND for securing the payment or repayment of money, or the transfer or retransfer of stock. See "*Mortgage*," &c., and "*Marketable Security*."	
BOND in relation to any annuity upon the original creation and sale thereof. See "*Conveyance on Sale*," and sect. 60.	
BOND, COVENANT, or INSTRUMENT of any kind whatsoever.	
(1.) Being the only or principal or primary security for any annuity (*except upon the original creation thereof by way of sale or security, and except a superannuation annuity*), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.	
For a definite and certain period, so that the total amount to be ultimately payable can be ascertained.	The same ad valorem duty as a bond or covenant for such total amount.
For the term of life or any other indefinite period.	
For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity or sum periodically payable . .	£ s. d. 0 2 6
(2.) Being a collateral or auxiliary or additional or substituted security for any of the above mentioned purposes where the principal or primary instrument is duly stamped.	
Where the total amount to be ultimately payable can be ascertained.	The same ad valorem duty as a bond or covenant of the same kind for such total amount.

	Duty. £ s. d.
In any other case:	
For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity or sum periodically payable	0 0 6
(3.) Being a grant or contract for payment of a superannuation annuity, that is to say a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he attains a specified age and so as to commence on his attaining that age.	
For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity .	0 0 6
BOND given pursuant to the directions of any Act, or of the Commissioners or the Commissioners of Customs, or any of their officers, for or in respect of any of the duties of excise or customs, or for preventing frauds or evasions thereof, or for any other matter or thing relating thereto.	
Where the penalty of the bond does not exceed 150*l.*	The same ad valorem duty as a bond for the amount of the penalty.
	£ s. d.
In any other case	0 5 0

Exemption.

Bond given as aforesaid upon, or in relation to, the receiving or obtaining, or for entitling any person to receive or obtain, any drawback of any duty of excise or customs, for or in respect of any goods, wares, or merchandise exported or shipped to be exported from the United Kingdom to any parts beyond the seas, or upon or in relation to the obtaining of any debenture or certificate for entitling any person to receive any such drawback as aforesaid.

And see sect. 42.

	Duty. £ s. d.
BOND on obtaining letters of administration in England or Ireland, or a confirmation of testament in Scotland	0 5 0

Exemptions.

(1.) Bond given by the widow, child, father, mother, brother, or sister, of any common seaman, marine, or soldier, dying in the service of Her Majesty.

(2.) Bond given by any person where the estate to be administered does not exceed 100*l.* in value.

BOND of any kind whatsoever not specifically charged with any duty:

Where the amount limited to be recoverable does not exceed 300*l.*	The same ad valorem duty as a bond for the amount limited.
In any other case	£ s. d. 0 10 0

BOND, accompanied with a deposit of title deeds, for making a mortgage, wadset, or other security on any estate or property therein comprised.

See "*Mortgage*," &c., and sect. 86.

BOND, DECLARATION, or other DEED or WRITING for making redeemable any disposition, assignation, or tack, apparently absolute, but intended only as a security.

See "*Mortgage*," &c., and sects. 23 and 86.

1. PAYMENT OF MONEY AND INTEREST.

PRECEDENTS.

I. BOND *for* PAYMENT *of* MONEY *and* INTEREST, *either in one* SUM *or by* INSTALMENTS, *and either with* ONE, TWO, THREE, *or* MORE OBLIGORS, *or* ONE, TWO, THREE, *or* MORE OBLIGEES (*a*).

Common obligation from one to one.

KNOW ALL MEN BY THESE PRESENTS, that I (*b*), [*obligor*], of, &c., am bound to (*c*) [*obligee*], of, &c., in the sum of [*generally double the amount of the principal sum to be secured*]; For payment whereof I (*d*) bind myself by these presents. Sealed with my seal. Dated this —— day of ——, 19—.

Condition of a bond from one to one, for payment of money and interest (*e*).

THE CONDITION of the above-written bond or obligation is such, that if the above-bounden (*f*) [*obligor*], his heirs, execu-

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Stamp.

(*a*) Where the bond is given by way of security for a fixed sum the stamp will be an *ad valorem* stamp, as for a mortgage on the principal sum secured: see Stamp Act, 1891, s. 86, and 1st Sched. *tit.* "Mortgage, Bond, &c." If given to secure future advances of an indefinite amount, see *post*, p. 176, note (*q*). As to stamps on "annuity" bonds and "faithful service" bonds, and other special forms, see under the Precedents of such bonds.

Two or more obligors.

(*b*) If there be two or more obligors,

"We [*names, addresses, and descriptions of obligors*] are bound," &c.

Two or more obligees.

(*c*) If there be two or more obligees insert names, addresses, and descriptions of obligees.

Two obligors.

(*d*) If there be two or more obligors, say,

"We jointly and severally bind ourselves," &c.

Formerly the form of an obligation for several obligors was, "We bind ourselves and each of us, and any four, three, or two of us jointly and severally," &c.; but by reason of the provisions of Order XVI. of the Rules of the Supreme Court, 1883, rr. 4, 6, the words given above are all that are now required.

(*e*) If there be a surety or sureties, it seems prudent to say,

"WHEREAS the above-bounden [*surety*] has [*or*, (*sureties*) have] agreed to join with the said [*principal*] in the above-written bond, subject to the condition hereunder written, as a surety [*or*, sureties] for the said [*principal*], his heirs, executors, and administrators. NOW THEREFORE THE CONDITION," &c.

(*f*) If there be two obligors, say,

tors, or administrators (*g*), should pay or cause to be paid unto the said [*obligee*] (*h*), his executors, administrators, or assigns, the sum of £——, with interest for the same after the rate of five pounds for one hundred pounds for a year (*i*), upon the —— day of [*generally six months from the date*] now next ensuing, without any deduction, then the above-written bond shall be void, or otherwise shall be and remain in full force.

Signed, sealed, and delivered
in the presence of

"the said [*obligors*], or either of them, or the heirs, executors, or administrators of them or of either of them," &c., *ut supra*.

If there be three or more, say,

"the above-bounden [*obligors*], or any of them, or the heirs, executors, or administrators of them or of any of them," &c.

(*g*) It is advisable to mention expressly "heirs, &c." of the obligor and "executors, &c." of the obligee in the *condition*, in order that the events in which the bond is to be avoided may be set forth with strict accuracy.

To two or more.

(*h*) If there be two or more obligees, say,

"[*obligees*], their executors, administrators, or assigns, the sum," &c.

By instalments.

(*i*) If to be paid by instalments, say,

"in the manner following: that is to say, the sum of £—— on the —— day of —— now next ensuing; the sum of £—— on the —— day of —— then next following; and the sum of £—— on the —— day of ——, in the year 19—; together with interest, after the rate aforesaid, on each of the said days of payment, for the said principal sum of £——, or so much thereof as at or immediately before the payment of such instalments shall be due and owing, without," &c.

II. PAYMENT BY FOUR INSTALMENTS.

II. BOND *from* ONE *to* TWO, *for* PAYMENT, *by* INSTALMENTS, *of a* SUM *of* MONEY; *which the* OBLIGEES *have agreed to* TAKE *in full* DISCHARGE *of a* DEBT *of* LARGER AMOUNT, *if the* INSTALMENTS, *with* INTEREST, *should be regularly* PAID: *and* AGREEMENT *that if the* INSTALMENTS *are not duly* PAID, *such* PAYMENTS *as shall be made shall only be a* PARTIAL DISCHARGE *of the original* DEBT (*k*).

Obligation.

KNOW ALL MEN BY THESE PRESENTS, that I [*obligor*], of, &c., am bound to [*obligees, names and addresses*], in the sum of 2,360*l.*, for payment whereof I bind myself by these presents. Sealed with my seal. Dated this —— day of ——, 19—.

Recital of debt.

Inability to pay.

Agreement to accept part payment by instalments,

if regularly paid.

Condition for payment of sum by instalments.

WHEREAS the above-bounden [*obligor*] is indebted to the above-named [*obligees*] in the sum of 3,030*l.*: AND WHEREAS the above-bounden [*obligor*] is unable to fully satisfy and pay to the said [*obligees*] the said debt, and the said [*obligees*] have agreed to accept from the above-bounden [*obligor*] the sum of 1,180*l.*, payable by instalments, with interest thereon at the rate of —— per cent. per annum, as hereinafter is mentioned, in full satisfaction and discharge of the said debt or sum of 3,030*l.*, provided the said sum of 1,180*l.*, with interest as aforesaid, be regularly paid as is hereinafter mentioned. NOW THE CONDITION of the above-written bond is such, that in case the above-bounden [*obligor*], his heirs, executors, or administrators, or any of them, shall pay to the above-named [*obligees*] (*l*), their executors, administrators, or assigns, the sum of 1,180*l.* by four equal instalments of 295*l.* each, the first of such instalments to be paid on the —— day of —— next, the second on the —— day of ——, the third on the —— day of ——, and the fourth on the —— day of ——; and shall also in the meantime, and till the whole of the said sum of 1,180*l.* shall be paid as aforesaid, pay to the said [*obligees*], their executors, administrators, or assigns, interest for the said sum of 1,180*l.*, or for so much thereof as shall for the time being remain unpaid, at the rate of —— per cent. per annum, to be computed from the date of the above-

(*k*) Stamp, *ad valorem* as on a mortgage for 1,180*l.*

Survivorship.

(*l*) It is not now necessary to say "and the survivors or survivor of them," &c. See Preliminary Note, *ante*, p. 168.

written bond by equal half-yearly payments, on the —— day of —— and the —— day of —— in each year, the first of such payments to be made on the —— day of —— next; then, and in such case, the above-written bond shall be void; otherwise the same shall remain in force; but so, nevertheless, that in case of failure in making the several payments aforesaid, or any of them, within —— days after the respective days hereinbefore appointed for payment thereof respectively, then this bond, or any payment or payments to be made under the same, shall not be construed or taken as a satisfaction or discharge of the said debt or sum of 3,030*l.*, or of any further or other part thereof, than shall have been actually paid under this bond (*m*); but, in such case the whole of the said sum of 3,030*l.*, or so much thereof as shall not have been actually paid as aforesaid, shall forthwith become payable to the said [*obligees*], and be recoverable accordingly (*n*).

II. PAYMENT BY FOUR INSTALMENTS.

Agreement that, if instalments are not duly paid, payments made shall only be partial discharge.

Signed, sealed, and delivered
in the presence of

III. POST OBIT BOND *with a* SURETY *for securing a* SUM *if the* VENDOR *should* SURVIVE *his* FATHER (*o*).

KNOW ALL MEN BY THESE PRESENTS, that we [*names and addresses of principal and surety*], are bound to [*obligee*], of, &c., in the sum of £——, for payment whereof we jointly and severally bind ourselves by these presents. Sealed, &c. Dated, &c.

Obligation.

WHEREAS the above-named [*obligee*] has contracted with the above-bounden [*principal*] for the purchase of the sum of 2,500*l.* to be paid to the said [*obligee*], his executors, administrators, or assigns, in the event of his, the said [*principal*], surviving his father [*father*], of, &c., but not otherwise, at or for the price of 1,000*l.*: AND WHEREAS, in pursuance of the said contract, the said [*obligee*] has paid the sum of 1,000*l.* unto the said [principal],

Recital of contract for purchase of 2,500*l.*

Payment of purchase-money.

(*m*) As the obligees by the recital agree to take the sum secured by the bond as a discharge for the debt, they should sign the bond. Notwithstanding the stipulation at the end of the bond, an additional stamp does not appear to be necessary, because it is a modification of the terms on which the bond is given.

An agreement in a bond respecting incidental matter does not require an agreement stamp.

(*n*) This stipulation is valid: see *Ex p. Burden*, 16 Ch. D. 675.

(*o*) Stamp: see *ante*, p. 172, note (*a*).

III. CONTINGENT POST OBIT, WITH SURETY.

the receipt whereof the said [*principal*] hereby acknowledges: AND WHEREAS upon the treaty for the purchase of the said contingent sum of 2,500*l.*, it was agreed that the payment thereof, in the event aforesaid, should be secured by the joint and several bond of the said [*principal*] and [*surety*] as the surety for the said [*principal*]. NOW THEREFORE THE CONDITION of the above-written obligation is such, that if the said [*principal*] shall survive the said [*father*]; and in such case, if the said [*principal*] and [*surety*], or either of them, or the heirs, executors, or administrators of them, or of either of them, should pay or cause to be paid to the said [*obligee*], his executors, administrators, or assigns, within six calendar months next after the decease of the said [*father*], in the lifetime of the said [*principal*], the sum of 2,500*l.* sterling; or in case the said [*principal*] shall die in the lifetime of the said [*father*], then the above-written bond shall be void, or otherwise shall be and remain in full force.

Agreement that contingent sum should be secured by bond.

Condition.

Signed, sealed, and delivered
in the presence of

IV. BOND *from a* PRINCIPAL *and* TWO SURETIES *to* BANKERS, *to secure to a* BANKING FIRM *such* BALANCE *as may become* DUE *on* ACCOUNT *current* (*p*). PROVISO *limiting the* AMOUNT *to be* RECOVERED *under the* BOND (*q*).

Obligation.

[BOND, *joint and several, ut ante*, p. 172, *note* (*b*).]

Recital of carrying on business:

WHEREAS the above-named [*obligees*] carry on the business of bankers in copartnership under the firm or style of ——: AND

(*p*) See *Australian Joint Stock Bank* v. *Bailey*, [1899] A. C. 396.

Stamp.

Future advances.

(*q*) Sect. 88, sub-sect. (2) of the Stamp Act, 1891, enacts, with regard to securities for future advances, where the total amount secured or to be ultimately recoverable is unlimited, as follows:—"Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall for the purpose of stamp duty be deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made." This bond should therefore be stamped with an *ad valorem* stamp as on a mortgage for an amount which it is estimated will cover any overdraft on the current account.

IV. TO BANKERS, FOR LIMITED CURRENT BALANCE.

WHEREAS the above bounden [*principal*] now carries on the business of [——]: AND WHEREAS the said [*principal*] has requested the said [*obligees*] to accept and discount notes, drafts, and bills of exchange, for him the said [*principal*]; and also to advance and lend him such sum and sums of money as he may require for his convenience and accommodation, in order to enable him to carry on the said business; and also to keep a cash or running account with him, the said [*principal*]; which they, the said [*obligees*], have agreed to do, upon having the balance of the said cash or running account secured by the joint and several bond of the said [*principal*], and of the said [*sureties*], in the penal sum of £——, with such condition as is hereinafter contained. NOW THEREFORE THE CONDITION of the above written bond is such, that if the above bounden [*principal*] and [*sureties*], or any of them, or the heirs, executors, or administrators of them, or of any or one of them, shall, from time to time, pay or cause to be paid unto the said [*obligees*], or any of them, or other the persons or person for the time being carrying on the said business of bankers now carried on under the firm of ——, or to the executors or administrators of them, or any of them respectively (hereinafter referred to as "the said bankers or their representatives"), ALL such sum and sums of money as shall or may at any time be due to the said bankers or their representatives, for or on account of any drafts, notes, or bills of exchange, drawn or discounted upon, with, or by the said bankers or their representatives, by or for or on account of, or any advances or payments made by the said bankers or their representatives, to, or for the use or convenience of, or on account of, the said [*principal*], either alone or jointly with any other person or persons with whom he may enter into partnership, or the executors or administrators of him, or them, or any of them, or for, or on account of, interest, commission, or other lawful charges incidental to the said transactions, or any of them, together with all costs and expenses which may be incurred by the said bankers or their representatives in relation to the premises, then the above written bond or obligation shall be void and of no effect, otherwise the same shall be and remain in full force and virtue: PROVIDED ALWAYS, and it is hereby agreed and declared, that the sum of money to be ultimately recovered on this bond against either of them, the said [*sureties*], or his heirs, executors,

that principal hath requested bankers to open an account with him;

which they have agreed to do, on having running balance secured by the bond of principal and sureties;

Condition for payment of all such sums as shall be due to the firm for the time being,

on account of principal; or on his and his partner's account:

Proviso limiting the amount of the money to be

IV. TO BANKERS, FOR LIMITED CURRENT BALANCE.

or administrators, shall be, and is hereby limited not to exceed the sum of £——: PROVIDED ALSO that, although as between the said [*principal*] and the said [*sureties*], the said [*sureties*] are only sureties for the said [*principal*], nevertheless, as between the said [*sureties*] and the said bankers and their representatives respectively, the said [*sureties*] shall be taken to be principal debtors for the moneys intended to be hereby secured, so that they shall not, nor shall either of them, nor the heirs, executors, or administrators of them, or either of them, be released from their, or his, liability, under the above written bond, by reason of time being given to the said [*principal*], his heirs, executors, or administrators, or by the release of any collateral securities for the moneys intended to be hereby secured, or by any other forbearance, act, or omission of the said bankers or their representatives, or by any other matter or thing whereby the said [*sureties*], or either of them, or the heirs, executors, or administrators of them, or either of them, would be so released but for this provision.

Limit of sum recovered under the bond.

Sureties to be liable as principals.

Signed, sealed, and delivered
in the presence of

V. BOND, *with* SURETIES, *for the* FAITHFUL SERVICE *of a* CLERK *to* PARTNERS, *notwithstanding any* ALTERATION *in the* FIRM (*r*).

Obligation.

KNOW ALL MEN BY THESE PRESENTS, that we [*clerk*], of, &c., [*surety*], of, &c., and [*surety*], of, &c., are bound to [*partners*], carrying on business together in copartnership as ——, in the sum of 2,000*l*. For payment whereof we jointly and severally bind ourselves by these presents, sealed with our seals. Dated this —— day of ——.

Recital of having taken clerk.

WHEREAS the above-named [*partners*] have lately admitted the above bound [*clerk*] into their service, as their clerk, and have agreed to retain and continue him in their said service, on his obtaining two respectable persons to become sureties for his faith-

(*r*) Stamp, 10*s*.; the amount recoverable being over 300*l*.: see Preliminary Note, *ante*, pp. 170, 171.

V. FAITHFUL SERVICE OF CLERK.

ful and honest conduct during his service: And the said [*sureties*] have, at the request of the said [*clerk*], agreed to become such sureties, and have for that purpose executed the above written bond. NOW THE CONDITION of the above written bond is such, that, if the said [*clerk*] shall from time to time, and at all times hereafter, so long as he shall be in the service of the said [*partners*], or either of them, alone or jointly with any other person or persons who may from time to time carry on the said business of —— in partnership with them, or either of them, or in the service of any other person or persons who may hereafter carry on the said business after the death or retirement of the said [*partners*] (hereinafter referred to as "the partners or partner for the time being"), faithfully and diligently perform the said service and all duties incidental thereto, and well and satisfactorily account for, and pay over and deliver to the partners or partner for the time being, or the executors or administrators of them, or of any of them, all and every sums and sum of money, and securities for money, goods, and effects whatsoever, which he the said [*clerk*] shall receive for the use of them, or any of them, or which shall at any time or times be intrusted to his care by them the partners or partner for the time being, or any of them, or by the correspondents or customers of them, or of any of them, or others to whom they, or any of them, are, or is, or shall or may be liable or accountable: And shall not at any time embezzle, make away with, obliterate, deface, or in anywise injure any of the money, securities for money, books, papers, writings, goods, or effects of them the partners or partner for the time being, or any of them, or of the correspondents or customers of them, or of any of them, or others to whom they or any of them are, or is, or shall or may be or become liable or accountable; or in case the said [*sureties*], or either of them, their, or either of their, heirs, executors or administrators, shall, when required, make good to the partners or partner for the time being, or any of them, or their or his executors or administrators, all moneys, books, papers, writings, goods, or effects which may be embezzled, made away with, obliterated, defaced, or injured, or unlawfully disposed of by the said [*clerk*] whilst in such service as aforesaid; And shall keep the partners or partner for the time being, and each of them, their, and each of their, executors or administrators, indemnified against all losses, damages, or expenses by reason of any such act or

Agreement to become sureties.

Condition for faithful service of clerk:

and that he shall not embezzle, &c.

V. FAITHFUL SERVICE OF CLERK.

default of the said [*clerk*]: And so that any forgiveness or forbearance on the part of the said partners or partner for the time being, or any of them, or the executors or administrators of them, or any of them, shall not release the said [*sureties*], or either of them, or their respective heirs, executors or administrators, in respect of their or his liability under the above written bond: Then, and in such case, the above written bond to be void, and of no effect; otherwise to remain in full force. PROVIDED ALWAYS, and it is hereby declared, that the said [*sureties*], or their respective heirs, executors or administrators, are not separately, or individually, to be liable for more than 1,000*l.* each, parcel of the said sum of 2,000*l.* mentioned in the said above written bond or obligation.

Proviso that sureties shall only be liable to a given amount.

Signed, sealed, and delivered
in the presence of

Obligation.

VI. BOND *for the* PERFORMANCE *of an* AGREEMENT. [BOND, *ut ante*, p. 172] (*s*).

Condition for performance of a specified agreement.

THE CONDITION of the above written bond is such, that, if the above bounden [*obligor*], his executors and administrators, should, in all things, on his and their parts, observe, perform, fulfil, and keep all and singular the clauses, conditions, agreements, matters, and things, which on the part of the said [*obligor*], his executors or administrators, are to be observed, performed, fulfilled, and kept, according to an agreement in writing, bearing even date herewith [*or* dated the —— day of ——, 19—], and expressed to be made between the said [*obligor*], of the one part, and the said [*obligee*], of the other part; Then the above written obligation shall be void; but otherwise shall remain in full force.

Signed, sealed, and delivered
in the presence of

(*s*) Stamp, where the amount recoverable does not exceed 300*l.*, *ad valorem* as a bond for the amount limited; in any other case, 10*s.*: see Preliminary Note, *ante*, pp. 170, 171.

VII. WITH TWO SURETIES, TO PERFORM CONTRACT FOR BUILDING, &C.

VII. BOND *from* BUILDERS, *and their* SURETIES, *for the due* PERFORMANCE *of a* CONTRACT *for* BUILDING *a* SCHOOL, *and* ALTERING *and* REPAIRING *a* HOUSE (*t*).

Obligation to a trustee for the managers of parish schools, from two principals, jointly and severally, with a separate lien part from two sureties severally, in an additional penalty.

KNOW ALL MEN BY THESE PRESENTS, that we [*builders*], both of, &c., are jointly and severally bound to [*trustees*], of, &c. (the trustees nominated by and on behalf of the managers of the schools of the parish of ——, in the county of ——), in the penal sum of £——: AND that we [*sureties*], of, &c. (as the sureties for the said [*builders*], their executors and administrators), are severally and respectively bound to the said [*trustees*], in the penal sums of £—— and £——: ALL the said several sums to be paid to the said [*trustees*], or their certain attorney or attorneys, executors, administrators, or assigns. FOR which payment to be made by us the said [*builders*], we the said [*builders*], bind ourselves, jointly and severally; And for which several payments to be well and truly made by us, the said [*sureties*], respectively, we the said [*sureties*], respectively, bind ourselves respectively by these presents. Sealed with our seals. Dated the —— day of ——, 19—.

Recital of contract to erect schools, &c.;

WHEREAS the above bounden [*builders*], have lately entered into a contract, in writing, with the managers of the schools of the parish of —— aforesaid, whereby they have contracted with the said managers to do the whole of the works, in erecting and completely finishing the buildings of an intended new school, with the outbuildings, staircases, &c., attached thereto; and to make alterations and reparations in the present house in —— Street, belonging to the said managers, in every respect agreeably to the drawings, agreements, conditions, clauses, and particulars mentioned, specified, and contained, in a specification to the said contract annexed, for the sum of £——: AND WHEREAS, at the time of entering into such agreement as aforesaid, by the said [*builders*], they and the said [*sureties*], as their sureties, agreed to execute the above written bond for the due performance of the several works so contracted to be done as aforesaid, according to the specification aforesaid. NOW THEREFORE THE CONDITION of the above written bond is such, that, if the above bounden [*builders*], or either of them, or the heirs, executors, or administrators of them, or either of them, should observe and

and agreement that principals and sureties should give bond for due performance of contract.

Condition for due performance of contract.

(*t*) Stamp: see last Precedent, p. 180, note (*s*).

VII. WITH TWO SURETIES, TO PERFORM CONTRACT FOR BUILDING, &c.

perform all the stipulations and provisions in the said contract mentioned, and on their or his parts or part to be observed and performed, and should within —— calendar months from the date of the above written bond or obligation, execute, and completely finish, or cause to be executed, and completely finished, all and singular the several erections, buildings, alterations, repairs, and other works particularised in the hereinbefore mentioned specification, conformably to the same specification in all respects whatsoever, and in a good and workmanlike manner, to the satisfaction of the architect, for the time being, of the said managers: But, so that no variation in the terms of the said contract, nor extension of time given to the said [*builders*], or either of them, or the executors or administrators of them, or either of them, beyond the original or enlarged time provided in the said contract for completing the said works, or performing any of the stipulations therein contained, nor any other delay or forbearance on the part of the said [*trustees*], or of the said managers, or their architect, for the time being, shall in any way release the said [*sureties*], or either of them, or the heirs, executors, or administrators of them, or either of them, from their or his liability, under the above written bond: Then the above written bond shall be void, or otherwise shall remain in full force.

Signed, sealed, and delivered
in the presence of

VIII. BOND *not to* Carry *on* Business *within* Half *a* Mile *for a certain* Number *of* Years, *nor to solicit* Custom *of* Persons *mentioned in a* Schedule (*u*).

Obligation.

KNOW ALL MEN by these presents, that I [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of £——, for payment whereof I bind myself by these presents. Sealed with my seal. Dated this —— day of ——.

Recital of co-partnership; dissolution:

Whereas the above bound [*obligor*] and the above named [*obligee*] have lately carried on the business of ——, in partnership, at - - aforesaid: And whereas the said [*obligor*] and [*obligee*] have dissolved the said partnership; And the said

(*u*) Stamp: see *ante*, p. 180, note (*s*).

VIII. NOT TO CARRY ON BUSINESS.

[*obligor*], in consideration of the sum of £—— paid to him by the said [*obligee*], has assigned to the said [*obligee*] all his the said [*obligor's*] share and interest in the stock-in-trade and effects of the said partnership; and has agreed that he will not carry on the business of a ——, within the distance of half a mile of the said house at ——, during the term of —— years, as hereinafter mentioned; And will not, within the said term of —— years, solicit the custom of any of the persons whose names are mentioned or specified in the schedule hereto; or, otherwise that he will pay the sum of £—— to the said [*obligee*], as liquidated damages. NOW THE CONDITION of the above written bond is such, that, if the said [*obligor*], or his wife or widow, shall not at any time, directly or indirectly, either alone or in partnership with, or as agent for, any person or persons whomsoever, carry on the said trade or business of ——, or any branch thereof, or any trade or business connected therewith, within the distance of half a mile in any direction of the said house at ——, at any time within the space of —— years to be computed from the day of the date of the above written bond; and if the said [*obligor*], or his wife or widow, shall not, either by himself or herself, or by any other person whomsoever, at any time within the said space of —— years solicit the custom of any of the persons whose names are specified in the schedule or inventory hereunder written, to deal either with himself or herself, or with any other person whomsoever in such trade or business; or induce or prevail upon, or attempt to induce or prevail upon, any of the said persons whose names are mentioned in the said schedule not to deal, or to discontinue his, her, or their dealing with the said [*obligee*]; Or, in the event of the said [*obligor*], his wife or widow, failing to observe any of the conditions hereinbefore contained, then if the said [*obligor*], his heirs, executors, or administrators, shall forth-

assignment of retiring partner's share;

and agreement by retiring partner not to carry on business within half a mile;

nor solicit custom of persons mentioned in schedule;

and in case he should, to pay liquidated damages.

Condition that obligor shall not carry on business within half a mile (*x*);

nor solicit custom of any of the persons mentioned in the schedule;

or attempt to induce any of the same persons not to deal with obligee;

or shall pay liquidated damages (*y*).

(*x*) As to agreements in restraint of trade, see *ante*, p. 35, note (*t*).

(*y*) As to whether the sum named is to be recovered as a "penalty" or as "liquidated damages" depends on the intention of the parties as shown by the bond: *Pye* v. *British, &c. Syndicate, Ltd.*, [1906] 1 K. B. 425; *Diestal* v. *Stevenson*, [1906] 2 K. B. 345; *Clydebank, &c. Co.* v. *Don Jose Castaneda*, [1905] A. C. 6. The parties may agree upon a sum to be paid as liquidated damages in respect of the omission or commission of a particular act; but in ascertaining the intention of the parties

VIII. NOT TO CARRY ON BUSINESS.

with pay to the said [*obligee*], his executors, administrators, or assigns, the full sum of £——, as liquidated and ascertained damages, and not as a penalty, without making any deduction or abatement thereout whatsoever; then the said bond or obligation shall be void and of no effect; otherwise shall be and remain in full force and virtue.

Signed, sealed, and delivered
in the presence of

Schedule.

THE SCHEDULE ABOVE REFERRED TO.

IX. BOND *for* SECURING *an* ANNUITY *for the* GRANTOR'S LIFE; *without any other* SECURITY, *and* REPURCHASABLE (*z*).

Obligation from one to one.

KNOW ALL MEN BY THESE PRESENTS, that I, [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of £—— (*a*): For payment whereof I hereby bind myself (*b*) by these presents. Sealed with my seal. Dated this —— day of ——, 19—.

Recital of contract for purchase.

WHEREAS the said [*obligee*] has contracted with the said [*obligor*], for the purchase of an annuity of £——, to be paid to the said [*obligee*], his executors, administrators, and assigns, during the life of the said [*obligor*], for the price of £——;

Recital of payment.

which sum of £—— the said [*obligee*] has, on the day of the date of the above written bond, paid to the said [*obligor*], as he, the said [*obligor*], hereby acknowledges.

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the whole circumstances of the case must be taken into consideration: *Re Newman*, 4 Ch. D. 724; *Lord Elphinstone* v. *Monkland Iron, &c. Co.*, 11 App. Cas. 332; *Willson* v. *Love*, [1896] 1 Q. B. 626; *Strickland* v. *Williams*, [1899] 1 Q. B. 382; *Public Works Commrs.* v. *Hills*, [1906] A. C. 368; *Webster* v. *Bosanquet*, [1912] A. C. 394.

(*z*) This being a purchase of an annuity not before in existence and not created by grant or conveyance, the bond will bear an *ad valorem* stamp, as on a conveyance on sale, on the amount of the purchase-money: see Stamp Act, 1891, s. 60.

(*a*) The amount should be double the purchase-money.

(*b*) The heirs of the obligor are bound, though not here expressly mentioned: see Preliminary Note, *ante*, p. 168.

IX. ONLY FOR GRANTOR'S LIFE, REPURCHASABLE.

NOW THE CONDITION of the above written bond is such that if the said [*obligor*], his heirs, executors, or administrators, shall pay to the said [*obligee*], his executors, administrators, or assigns, during the life of him, the said [*obligor*], an annuity or yearly sum of £——, clear of deductions (except for income tax) (*c*), by equal quarterly payments, on the —— day of ——, &c., in every year, such annuity to be considered as accruing from day to day, and to be apportionable accordingly (*d*), the first quarterly payment thereof, or of the proportionate part thereof, in the event of the death of the said [*obligor*] in the meantime, to be made on the —— day of —— next ensuing the date of the above written bond; or if the said [*obligor*] shall at any time [after the expiration of three years from the date of the above written bond] give unto the said [*obligee*], his executors, administrators, or assigns, notice in writing, by the space of six calendar months, of his intention to repurchase the said annuity of £——; and shall at the end of the said six calendar months from the time such notice shall be given as aforesaid, pay unto the said [*obligee*], his executors, administrators, or assigns, all moneys that shall then be due for the arrears of the said annuity [together with a proportional part thereof from the last day of payment preceding such repurchase], up to the day of repurchasing the same as aforesaid; AND ALSO the sums of £—— and £——, being the original purchase-money of the said annuity, and half of a year's annuity in advance, as and in full for the repurchase of the said annuity of £—— above secured; THEN the above written bond shall be void and of no effect, otherwise shall be and remain in full force.

Condition, payment of annuity.

Declaration enabling grantor to repurchase, on giving six months' notice, and repaying original purchase-money, and half a year's annuity in advance.

Sealed and delivered
in the presence of

(*c*) The annuity cannot be made free of income tax.

(*d*) See Apportionment Act, 1870, as to omitting apportionment clauses.

X. FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE.

X. BOND *for* SECURING *an* ANNUITY *to a* MAN *for* LIFE, *and to his* WIFE *if she should* SURVIVE *him*, REPURCHASABLE *on* REPAYMENT *of the* AMOUNT *of the* PRICE *of the* ANNUITY (*e*).

Obligation.

KNOW ALL MEN BY THESE PRESENTS, that I, [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of £—— (*f*): For payment whereof I hereby bind myself. Sealed with my seal. Dated this —— day of ——, 19—.

Recital of contract of purchase.

WHEREAS the said [*obligee*] has contracted with the said [*obligor*], for the purchase of an annuity of £——, to be paid to the said [*obligee*], during his life and after his death to [*wife*] his wife, during her life, if she should survive him, at the price of £——.

Reference to collateral securities.

AND WHEREAS upon the purchase of the said annuity, it was agreed that the same should be secured by an indenture, bearing even date with the above written bond or obligation, and made between the said [*obligor*], of the first part, the said [*obligee*], of the second part, and [*trustee*], of, &c., of the third part: and also by the bond of the said [*obligor*].

Of paying consideration.

AND WHEREAS the said [*obligee*] has, on the day above written, paid to the said [*obligor*] the said sum of £——, which the said [*obligor*] hereby acknowledges.

Condition, payment of annuity.

NOW THE CONDITION of the above written bond is such that if the said [*obligor*], his heirs, executors, or administrators, should pay unto the said [*obligee*] during his life, and after his death to [*wife*], his wife, if she should survive him, during her life, an annuity or yearly sum of £——, clear of all deductions (except for income tax) (*g*), by equal quarterly payments, on the —— day of ——, &c., in every year, such annuity to be considered as accruing from day to day, and to be apportionable accordingly, the first payment to be made on the —— day of —— next ensuing the day above written: THEN the above written bond shall be void and of no effect, otherwise shall be and remain in full force.

Proviso for repurchase.

AND IT IS HEREBY DECLARED, that in case the said [*obligor*], his heirs, executors, or administrators, should at any time hereafter be desirous of repurchasing the said annuity, and of such

(*e*) As to the stamp, see *ante*, p. 184, note (*z*).
(*f*) Double the purchase-money.
(*g*) See *ante*, p. 185, note (*c*).

his or their intention should give unto the said [*obligee*], if he shall then be living, or unto the said [*wife*], his wife, if she shall have survived the said [*obligee*], seven days' notice in writing; AND should, at the expiration of the time to be mentioned in such notice, pay unto the said [*obligee*], if he shall be then living, or to the said [*wife*], his wife, if she shall then have survived the said [*obligee*], the sum of £——, together with all such sums of money as at the time of repurchasing the said annuity shall be due for the arrears thereof; [AND ALSO together with a proportional part of the same annuity, up to and including the day of repurchasing the same,] as and in full for the repurchase of the said annuity; THEN he, the said [*obligee*], if he shall then be living, or the said [*wife*], his wife, if she shall then have survived the said [*obligee*], shall deliver the above written bond to the said [*obligor*], his heirs, executors, or administrators, cancelled or to be cancelled; AND the said annuity shall cease and determine.

X. FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE.

Signed, sealed, and delivered
in the presence of

XI. BOND *of* INDEMNITY, *from a* VENDOR *to a* PURCHASER, *against the* LOSS *of* TITLE DEEDS (*h*).

KNOW ALL MEN BY THESE PRESENTS, that I, [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of £——: For payment whereof I bind myself by these presents. Sealed with my seal. Dated this —— day of ——, 19—. Bond.

WHEREAS [*recital of conveyance by obligor to obligee of certain freeholds*]: AND WHEREAS the title deeds and writings [mentioned in the schedule hereto] relating to the said freehold messuages, assured by the said indenture, are lost or mislaid. Recital of loss of deeds, and agreement for indemnity.

NOW THE CONDITION of the above written bond or obligation is such, that, if at any time the several title deeds and writings relating to the said premises [and specified in the schedule hereto] shall be found, and the said [*obligor*], her heirs, executors, or administrators, shall deliver or cause to be delivered the same title deeds and writings to the said [*obligee*], his heirs or assigns, safe, whole, and uncancelled, or in the condition in Condition.

(*h*) Stamp: see *ante*, p. 180, note (*s*).

XI. OF INDEMNITY AGAINST LOSS OF TITLE DEEDS.

which the same shall be found; [or if such deeds and writings, or any of them, being so found, shall appear to be in the custody of some person or persons entitled to them in respect of other property, then shall deliver or cause to be delivered to the said [*obligee*], his heirs and assigns, true and attested copies of such deeds and writings, together with the covenant or statutory acknowledgment and undertaking of the same person or persons, for the production and safe custody of the same deeds and writings; all such copies, covenants, acknowledgments, and undertakings, as aforesaid being respectively made and entered into at the expense of the said [*obligor*], her heirs, executors, or administrators;] AND ALSO, if the said [*obligor*], her heirs, executors, and administrators, shall, at all times, keep indemnified the said [*obligee*], his executors, administrators, and assigns, and all and every part of the said hereditaments and premises assured by the said indenture against all incumbrances and mortgages whatsoever in anywise affecting the premises, except only any mortgages or incumbrances effected by the said [*obligee*], his heirs, executors, administrators, or assigns, and from and against all proceedings, actions, claims, and demands which may be brought or made against him or them by any person or persons claiming any estate, title, or interest in or to the premises, or any part thereof, other than persons claiming under the said [*obligee*], or for or by reason of the want or non-production of the said title deeds and writings, or any of them, and from and against all costs and expenses which the said [*obligee*] may sustain or incur in relation to the premises; THEN the before written bond shall be void, but otherwise shall remain in full force.

Signed, sealed, and delivered
in the presence of

THE SCHEDULE ABOVE REFERRED TO.

XII. BOND *of* INDEMNITY *to the* OBLIGOR *of a* LOST BOND, *on* PAYMENT *of* MONEY *secured thereby* (*i*).

Obligation.

KNOW ALL MEN, &c., *ut ante*, p. 187.

Recites the bond which is lost.

WHEREAS, by a bond or obligation dated the —— day of ——, under the hand and seal of [*obligee*], of, &c., the said [*obligee*]

(*i*) Stamp: see *ante*, p. 180, note (*s*).

XII. OF INDEMNITY ON PAYMENT OF A LOST BOND.

became bound unto the said [*obligor*], in the sum of £——, with a condition for making the same void, upon payment by the said [*obligee*], his executors or administrators, unto the said [*obligor*], his executors, administrators, or assigns, of the sum of £——, with interest, after the rate of five pounds per centum per annum, on the day therein mentioned.

That principal secured by bond is still due, and agreement to pay it on execution of bond of indemnity.

And whereas the said principal sum of £—— is still due and owing upon the said bond or obligation, and the said [*obligor*] having called upon the said [*obligee*] for the payment of the said sum of £——, he, the said [*obligee*], has agreed to pay the same accordingly, in full satisfaction of all principal and interest moneys due and owing upon or by virtue of the said recited bond; but the same bond having been lost or mislaid, the said [*obligor*] has consented, upon such payment being so made to him as aforesaid, to enter into a bond, conditioned for the indemnity of the said [*obligee*] as hereinafter mentioned.

That moneys secured by bond have been paid.

And whereas, in pursuance of the said agreement, the said [*obligee*] has this day paid to the said [*obligor*] the said sum of £——, as he, the said [*obligor*], hereby acknowledges.

Condition to be void on giving up bond if found, and indemnifying executor of obligor in the meantime.

Now the condition of the above written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, shall, when and so soon as the said bond of the said —— day of —— shall be found, deliver or cause to be delivered the same unto the said [*obligee*], his executors or administrators, for the purpose of being cancelled; And shall, at all times hereafter, keep indemnified the said [*obligee*], his heirs, executors, and administrators, from and against all actions, costs, charges, damages, and expenses, which he or they shall or may pay, bear, suffer, sustain, and be put unto, for or by reason or on account of the said bond, or the principal and interest moneys thereby secured, or any act, matter, or thing relating thereto: Then, the above written bond shall be void, but otherwise shall remain in full force.

Signed, sealed, and delivered
in the presence of

CONDITIONS OF SALE.

PRELIMINARY NOTE.

Commencement of title.

By sect. 1 of the Vendor and Purchaser Act, 1874, forty years was substituted for sixty years as the period of commencement of title which a purchaser may require in the absence of stipulation to the contrary: but in cases where a longer title than sixty years could formerly be required, a longer title than forty years must now be given. If the vendor wishes to offer a shorter title than forty years, or a title commencing with a document of an exceptional character, *e.g.*, a voluntary conveyance (see *Re Marsh and Earl Granville*, 24 Ch. D. 11), then the date and nature of such document should be stated in the conditions of sale, and an express condition must be made with respect thereto.

Shorter title, or one commencing with exceptional document.

Defects revealed by recitals or *aliunde*.

By sect. 3 (3) of the Conveyancing Act, 1881, the purchaser is debarred from investigating the title prior to the time prescribed by law or stipulated for the commencement of the title. But this does not prevent the purchaser from taking an objection to the earlier title based on defects revealed by recitals in abstracted deeds or *aliunde*. (*Nottingham, &c. Co.* v. *Butler*, 16 Q. B. D. 778: *Re Cox and Neve*, [1891] 2 Ch. 109; *Re Nisbet and Potts*, [1906] 1 Ch. 386.)

Enfranchisement of copyholds.

The title of the lord of the manor cannot be required on the sale of enfranchised copyholds (Conveyancing Act, 1881, s. 3 (2)); but the conditions of sale should provide that the purchaser shall take subject to any restrictions, &c. in the enfranchisement deed.

Leaseholds.

A purchaser of leaseholds held under a lease or underlease cannot require the title to the freehold (see Vendor and Purchaser Act, 1874, s. 2 (1)), and, in the case of an underlease, cannot call for the reversioner's title (see Conveyancing Act, 1881, s. 3 (1)); but he can require the lease under which the vendor holds and the dealings therewith to be abstracted. (*Gosling* v. *Woolf*, [1893] 1 Q. B. 39.) Sect. 2 (1) of the Vendor and Purchaser Act, 1874, applies to long leaseholds, but the creation of the term must be shown. (*Frend* v. *Buckley*, L. R. 5 Q. B. 213.)

Contract for lease.

The Conveyancing Act, 1882, s. 4, prevents a purchaser of a lease made under a power from requiring an abstract or production of the contract for the lease.

Leases for lives.

The provisions of the Vendor and Purchaser Act, 1874, and Conveyancing Act, 1881, above referred to, as to leaseholds, do not apply to leases for lives.

Receipt for rent. Evidence of performance of covenants.

On a sale of leaseholds (query as to leases for lives) the purchaser is to assume, unless the contrary appears, that the lease was duly granted; and on the production of the receipt for the rent last due is to assume, unless the contrary appears, that the covenants have been performed up to completion. (See Conveyancing Act, 1881, s. 3 (4) and (5); and see also *Highett* v. *Bird*, [1903] 1 Ch. 287; *Re Taunton, &c. Society and Roberts*, [1912] 2 Ch. 381.) Sub-sects. (4) and (5) of sect. 3 of the Act of 1881 do not apply to a sale of the mortgage term by a mortgagee by subdemise, who must therefore protect himself by a special condition. (See *post*, p. 239.)

Recitals in deeds, &c. twenty years old.

The Vendor and Purchaser Act, 1874, s. 2 (2), makes recitals, statements, and descriptions of facts, matters, and parties in instruments twenty years old (unless proved to be inaccurate) evidence of the truth of such facts, matters, and descriptions. See, as to the effect of this enactment, *Bolton* v. *London School Board*, 7 Ch. D. 766, which, however, was disapproved in *Re Wallis and Grout*, [1906] 2 Ch. 206; and see also *Re Marsh and Earl Granville, supra*. Where it is intended to make recitals evidence in a deed under twenty years old, or to make them evidence of the contents of documents, or where the sale is of personalty, an express condition must be inserted.

Covenant for production of deeds.

Under the Vendor and Purchaser Act, 1874, s. 2 (3), the inability to furnish a legal covenant to produce documents of title is not to be an objection to the title in case the purchaser will on the completion of the contract have an equitable title to the production of such documents. As to the purchaser's equitable right to the production of documents, see Dart, 7th ed., 483; Elph. Introd., 6th ed., 118. As to furnishing evidence of documents recorded abroad, and of lost documents, see *Halkett* v. *Earl of Dudley*, [1907] 1 Ch. 590; *Re Halifax, &c. Co. and Wood*, 79 L. T. 536. Such covenants for production as the purchaser can require are to be furnished at his expense. (Vendor and Purchaser Act, 1874, s. 2 (4).)

Expenses

By the Conveyancing Act, 1881, s. 3 (6), the expenses of (1) the production of documents not in the vendor's possession, and of journeys incidental thereto; (2) searching for, procuring and verifying certificates and other evidence and information not in the vendor's possession; and (3) of making copies of documents not in the vendor's possession, or which are retained by him, are to be paid by the purchaser (see *Willett* v. *Argenti*, 60 L. T. 735; *Re Ebsworth and Tidy*, 42 Ch. D. 23, 34; *Re Stuart and Olivant*, [1896] 2 Ch. 328); but the vendor is bound at his own expense to furnish a proper abstract of title. (See *Re Johnson and Tustin*, 30 Ch. D. 42.) As to the purchaser's right to have the title deeds on completion, see *Re Duthy and Jesson*, [1898] 1 Ch. 419.

This section does not apply to the surveyor's certificate as to completion, where a lessee covenants to complete a house to the surveyor's satisfaction (*Moody and Yates' Contract*, 30 Ch. D. 344); nor, it would seem, to a certificate under sect. 11 of the Finance Act, 1894.

Muniments retained by vendor.

Where the vendor retains any part of an estate to which documents relate, he is entitled to retain such documents. (Vendor and Purchaser Act, 1874, s. 2 (5).) "Estate" includes land, but not pure personalty. (*Re Williams and Newcastle*, [1897] 2 Ch. 144; *Re Fuller and Leathley*, 76 L. T. 646; see, too, *Re Lehmann and Walker*, [1906] 2 Ch. 640.)

Purchaser of two or more lots under one title.

By sect. 3 (7) of the Conveyancing Act, 1881, a purchaser of two or more lots held under one title cannot require more than one abstract of such title, except at his own expense, in the absence of a contrary intention expressed in the contract for sale: sub-sect. (9); note also sub-sects. (8), (10) and (11).

Protection of solicitor or trustees adopting the Act.

By sect. 66 of the Conveyancing Act, 1881, a solicitor shall not be deemed guilty of neglect or become liable by reason of omitting, in good faith, to negative the inclusion or application of any of the provisions, stipulations, or words by the Act implied in any instrument or made applicable to any contract for sale; and trustees acting by a solicitor (sub-sect. (3)), or without a solicitor (sub-sect. (4)), are to be protected in like manner.

Trustees empowered to sell, subject to depreciatory conditions.

The Trustee Act, 1893, s. 14 (1), provides that no sale by a trustee shall be impeached on the ground that any of the conditions are depreciatory, unless it appears that the consideration is thereby rendered inadequate, and by sub-sect. (2) after conveyance no sale by a trustee is to be impeached on such ground, except where collusion appears; and by sub-sect. (3) no purchaser

is to make any objection to a sale by a trustee on the ground aforesaid.

By sect. 15 of the same Act a trustee can sell or buy without including the application of sect. 2 of the Vendor and Purchaser Act, 1874 (as to reversioner's title on sale of leaseholds, see *ante*, p. 190).

Powers of trustees for sale, or with power of sale.

Sect. 13 of the Trustee Act, 1893, enables trustees to sell or concur with other persons in selling, subject to prior charges, and in such manner and subject to such conditions as they think fit. As to the duties of trustees who "concur" in a sale of trust property, together with other property not subject to the trust, see *Cooper and Allen*, 4 Ch. D. 802.

Registered land.

As to Registered Land, see *post*, p. 264.

PRECEDENTS.

I. GENERAL CONDITIONS *of* SALE *of* FREEHOLDS *or* COPYHOLDS, *or both*. VARIATIONS *for a* SALE *in* LOTS (*a*).

Conduct of sale.

1. The highest bidder [for each lot] shall be the purchaser thereof, and if any dispute shall arise respecting any bidding the property [lot] shall be put up again for sale at the last previous and undisputed bidding, or the auctioneer may determine the dispute (*b*).

Reserve price.

2. There will be a reserve price [for each lot], and the vendor reserves the right of bidding himself, or by his agents (*c*).

Biddings.

3. No person shall advance less than £—— at any bidding, or such other sum as shall be named by the auctioneer, and no bidding shall be retracted.

Payment of deposit.

4. The [Every] purchaser shall, immediately after the sale, pay

(*a*) This form is only adapted as it stands to a sale of the simplest nature. It is impossible to provide conditions to meet all the possible complications which may arise, but many of these are met by the Special Conditions, *infra*, pp. 225 to 271, which, when required, can easily be incorporated in this form.

(*b*) For special conditions as to biddings, see pp. 225, 226.

(*c*) As to the importance of mentioning "a reserve price," see *Rainbow* v. *Howkins*, [1904] 2 K. B. 322; *McManus* v. *Fortescue*, [1907] 2 K. B. 1; *Gilliat* v. *Gilliat*, L. R. 9 Eq. 60.

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to the auctioneer [*or*, to Messrs. ——, the solicitors of the vendor] a deposit of 10 per cent. on the amount of his purchase-money (*d*), and sign an agreement in the form indorsed on these conditions.

Timber, &c. to be taken at a valuation.

5. [*Valuation of timber, fixtures, &c.: see special conditions, post,* pp. 245 *et seq.*]

Completion of purchase.

6. The [Every] purchaser shall pay the remainder of his purchase-money [and the amount of the aforesaid valuation, *or* "the price of the fixtures"] to the vendor or as he shall direct, on the —— day of ——, 19—, at the office of Messrs. ——, the solicitors of the vendor, No. —, —— Street [*or*, office of Messrs. —— aforesaid], and the purchase shall be then and there completed.

Possession.

7. The possession or the receipt of the rents and profits shall be retained, and all outgoings not payable by the tenants shall be discharged by the vendor up to the said —— day of ——, and as from that date possession or receipt of the rents and profits shall be taken, and the outgoings (*e*) paid and discharged by the purchaser, and, if necessary, such rents, profits, and outgoings shall for the purposes of this condition be apportioned: but the

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(*d*) The auctioneer is not obliged to accept a cheque for the deposit (*Johnston* v. *Boyes,* [1899] 2 Ch. 73), though it is not unreasonable for him to do so (*Farrer* v. *Lacy Hartland & Co.,* 31 Ch. D. 42). The auctioneer holds the deposit as "stakeholder" (*Harington* v. *Hoggart,* 1 B. & Ad. 577), but if the deposit is directed to be paid to the solicitor of the vendor he will hold as "agent," unless the payment is directed to be made to him "as stakeholder" (*Ellis* v. *Goulton,* [1893] 1 Q. B. 350; *Edgell* v. *Day,* L. R. 1 C. P. 80).

(*e*) Where the property is in hand, or the rates are not paid by the tenant, add,

"including any rates made but not demanded till after that day."

As to the incidence as between vendor and purchaser of "outgoings" incurred in relation to works executed by the vendor under a peremptory order by a sanitary authority, see *Barsht* v. *Tagg,* [1900] 1 Ch. 231; *Tubbs* v. *Wynne,* [1897] 1 Q. B. 74. As to improvement expenses incurred by a local authority under Public Health Acts and Private Street Works Act, 1892, which under these Acts become charged on the property for which they were incurred as from the completion of the works, see *Allen* v. *Driscoll,* [1904] 2 Ch. 226; *Millard* v. *Balby, &c. Council,* [1905] 1 K. B. 60; *East Ham U. D. C.* v. *Aylett,* [1905] 2 K. B. 22; *Re Bettesworth,* 37 Ch. D. 535; *Stock* v. *Meakin,* [1900] 1 Ch. 683; distinguished in *Re Farrer and Gilbert's Contract,* [1914] 1 Ch. 125; 83 L. J. Ch. 177. Undeveloped land duty must be borne by "the owner of the land for the time being" (sect. 19 of Finance (1909-10) Act, 1910), and is not apportionable.

purchaser [of any lot] shall not be let into actual possession or receipt of the rents and profits until the purchase is actually completed.

In case of delay purchasers to pay interest (*f*).

8. If, from any cause whatsoever, other than the wilful default of the vendor, the completion of the purchase [of any lot] shall be delayed beyond the said —— day of ——, the purchaser shall pay interest on the remainder of his purchase-money [and on the amount of the valuation aforesaid] at the rate of —— per cent. per annum from that day till the day of actual payment thereof, and shall not be entitled to compensation for the vendor's delay or otherwise. This provision is without prejudice to any right or remedy reserved to the vendor by any other of these conditions.

Commencement of title (*g*).

9. The title shall commence [as to part of the property with a conveyance on sale dated, &c., and as to other part with a will dated, &c.] [as to lots ——, with, &c.; as to lots ——, with, &c.]. [*For special conditions, see post*, p. 229.]

Recitals: Evidence (*h*).

10. Every document dated —— years or upwards prior to the sale shall be conclusive evidence of everything recited, stated, referred to, assumed, or implied therein, and of the contents and due execution of every deed or other document recited, stated, or referred to therein, and of which neither the original nor an attested copy is in the vendor's possession, and also that such deed or document contained no other material matter.

11. [*Here insert any special conditions as to evidence of title, stamps, registration, &c., post*, p. 232.]

Identity of parcels (*i*).

12. The [Every] purchaser shall admit the identity of the property bought by him with that described in the muniments of title thereof offered by the vendor, upon the evidence afforded by a comparison of the descriptions in the particulars and muni-

(*f*) As to payment of interest, see *Re Riley*, 34 Ch. D. 386; and as to what is "wilful default," see *Re Bayley-Worthington and Cohen*, [1909] 1 Ch. 648, and the cases there cited.

(*g*) As to this condition, see Preliminary Note, *ante*, p. 190.

(*h*) This condition may be used where it is desired to extend the provisions of the V. & P. Act, 1874, s. 2 (2), to documents of more recent date than twenty years. As to the effect of recitals under the statutory provision, see *Re Marsh and Earl Granville*, 24 Ch. D. 11. A recital of seisin does not debar the purchaser from calling for an abstract of the prior title: *Re Wallis and Grout's Contract*, [1906] 2 Ch. 206.

(*i*) For other forms, see Special Conditions, p. 243.

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ments (*k*), and such other evidence (if any) as the vendor can supply, and the vendor shall not be required to explain or reconcile differences or discrepancies in the descriptions as to quantity or otherwise [nor to distinguish the copyhold from the freehold portions of the property, or the copyhold portions held under different manors, or the parts held under different titles] [but a statutory declaration will be made if required at the purchaser's expense that the property has been enjoyed according to the title shown for —— years and upwards prior to the day of sale].

Charges, &c. affecting the property (*l*).

13. The property [Each lot] is subject to the existing tenancies thereof, and to the rights, easements, and restrictive covenants mentioned in the particulars, and [lot ——] is subject to a right of way over, &c., granted [*or*, reserved] by an indenture, dated, &c., and to certain restrictive covenants contained in an indenture, dated, &c. The counterparts or copies of the leases or written agreements (if any) with the tenants [and copies of all consents and notices given to or received from tenants in reference to improvements or renewal of tenancies, and of all statutory notices or orders affecting the property], and copies also of the above-mentioned indentures of the —— day of —— and the ——

Offer of inspection.

(*k*) As to the effect of this condition if it stopped here, see *Curling* v. *Austin*, 2 Dr. & Sm. 129.

(*l*) The particulars ought to mention specifically all rights, easements, restrictions, charges, and incumbrances which are known to the vendor, and subject to which it is intended that the property shall be sold: but if, as sometimes happens, the particulars are not prepared with sufficient care or skill omissions and inaccuracies will occur which it is the object of this condition to correct; and it affords a further protection to the vendor by offering the production at or prior to the sale of documents from an inspection of which the nature and effect of incumbrances may be ascertained: *Molyneux* v. *Hawtrey*, [1903] 2 K. B. 487. As to rights and easements which are not known and are not such as ought necessarily to be known to the vendor, the purchaser will be protected by Condition 17, *post*, p. 198. As to the purchaser's right to disclosure of incumbrances, see *Re Higgins and Hitchman*, 21 Ch. D. 95; *Hardman* v. *Child*, 28 Ch. D. 712; *Re Davis*, 40 Ch. D. 601; *Re Ebsworth and Tidy*, 42 Ch. D. 23; *Pemsel* v. *Tucker*, [1907] 2 Ch. 191; and of material latent defects, *Carlish* v. *Salt*, [1906] 1 Ch. 335, distinguished in *Shepherd* v. *Croft*, [1911] 1 Ch. 521, where the defect was held to be not so material as to entitle the purchaser to rescission; and see *Re Leyland and Taylor*, [1900] 2 Ch. 625; *Heywood* v. *Mallalieu*, 25 Ch. D. 357; *Nottingham & Co.* v. *Butler*, 16 Q. B. D. 778.

day of ——, will be produced at the sale, and may be seen at the office of the vendor's solicitors at any time within —— days previously, and the purchaser, whether he does or does not inspect the same, shall be deemed to purchase with full notice of the contents of all the said documents, and of the terms of the tenancies (*m*), and the nature and extent of the rights, easements, and restrictive covenants affecting the property, notwithstanding any incomplete or inaccurate statement thereof in the particulars or these conditions [and of the condition of the property as to repairs, party walls, and other matters]. [Where the vendor has no counterpart of any lease, tenancy, or agreement, the purchaser shall be satisfied with such evidence of the terms of the tenancy as the vendor may be able to furnish.] [The purchaser shall be deemed to have full notice of the customs of the manors of which the copyhold portions of the property are holden] (*n*).

Apportionment of incoming rents.

[14. The rents mentioned in the particulars shall be apportioned as the rents incident to the reversion in any case where more than one lot, or parts of more than one lot, are subject to the same lease or tenancy, and the consent of any tenant to such apportionment or the legal apportionment of such rent shall not be required.]

Registration.

[15. No objection or requisition shall be made on account of the non-registration in the county register of any deed, will, or other document.]

Stamps.

16. No objection shall be raised, or requisition made, on the ground that any document or order of the Court, dated prior to

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(*m*) As to a consent in writing to a tenant making improvements for which he becomes entitled to compensation, being a "term of the tenancy" within this condition, see *Re Earl of Derby and Fergusson's Contract*, [1912] 1 Ch. 479.

(*n*) If the property is sold subject to a mortgage (*i.e.*, as an equity of redemption) a further condition should be added:—

"The property is [also] sold subject to a mortgage [registered charge] for £——, with interest at —— per cent. per annum, payable half-yearly, which principal money and interest shall be paid by the purchaser, who shall indemnify the vendor therefrom by a covenant in the conveyance, and a duplicate of the conveyance, to be prepared and executed by the purchaser at his own expense, shall be delivered to the vendor on completion."

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the 17th May, 1888, is unstamped or insufficiently stamped (if any such there be) (*o*).

Misdescription (*p*).

17. The property [Each lot] is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all chief, quit, and other rents, rights of way, water, drainage, and other easements (if any): and to all liabilities to repair or contribute to the repair of roads, bridges, sewers, drains, fences, and other outgoings and incidents of tenure affecting the same. Any error, misstatement, or omission in the particulars [*or*, plan] or these conditions which shall be discovered shall not annul the sale, nor shall any compensation be allowed or paid to either the vendor or purchaser in respect thereof [*or*, "but a reasonable compensation, if demanded in writing prior to completion (*q*), shall be allowed or paid by the vendor or the purchaser, as the case may be, the amount thereof to be fixed by the auctioneer [*or*, 'by two referees to be appointed by each party, or their umpire, pursuant to the Arbitration Act, 1889 '], whose decision shall be final."]

Time for delivery of requisitions (*r*).

18. The [Every] purchaser shall make his objections and requisitions (if any) in respect of the title or evidence of title, or the abstract, particulars, or conditions, and send the same to Messrs. —— within —— days from the day of delivery to him or his solicitor of the abstract (*s*); and all objections and requisitions

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(*o*) This condition cannot be extended beyond this date: see the Stamp Act, 1891, s. 117.

(*p*) As to what discrepancies come, or do not come, within the compensation clause, see *Flight* v. *Booth*, 1 Bing. N. C. 370; *Debenham* v. *Sawbridge*, [1901] 2 Ch. 98 (defect of title); *Fawcett* v. *Holmes*, 42 Ch. D. 150 (quantity); *Jacobs* v. *Revell*, [1900] 2 Ch. 858; *Ashburner* v. *Sewell*, [1891] 3 Ch. 405 (right of way); *Re Jackson and Haden*, [1906] 1 Ch. 412; *Shepherd* v. *Croft*, [1911] 1 Ch. 521; *Re Puckett and Smith*, [1902] 2 Ch. 258; see also *post*, p. 276, note (*i*).

(*q*) See *May* v. *Platt*, [1900] 1 Ch. 616; *Thompson* v. *Hickman*, [1907] 1 Ch. 550.

(*r*) Where the objection goes to the root of the title this condition does not preclude the purchaser from raising it: *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465; cf. *Pryce-Jones* v. *Williams*, [1902] 2 Ch. 517.

(*s*) In order to avoid delay the following words are sometimes added:— "and within —— days after the delivery of the vendor's replies to the purchaser's requisitions and objections (if any), the pur-

which shall not be so made and sent within the time specified shall be taken to be waived, and for this purpose time shall be of the essence of the contract. Every abstract, if imperfect (*t*) in any particular, shall be deemed perfect as regards any objection or requisition if it supplies the information suggesting the same.

Power to rescind (*u*).

19. In case the [any] purchaser shall make any objection or requisition which the vendor shall be unable or [on the ground of difficulty, delay, or expense, or any other reasonable ground] unwilling to answer or comply with, the vendor may, notwithstanding any attempt to answer or to comply with such objection or requisition, or any previous or pending negotiation or litigation, upon giving to the purchaser not less than ten days' notice in writing, rescind the contract for sale, and in that case, unless the objection or requisition shall in the meantime be withdrawn, the sale shall, at the expiration of such notice, be annulled, the purchaser being thereupon entitled to repayment of the deposit-money, without interest, costs (*x*), or expenses, in full discharge and satisfaction of all claims or demands, and the purchaser shall thereupon return all abstracts and documents in his possession belonging to the vendor.

Conveyance.

20. Upon payment of the remainder of the purchase-money [and of the amount of the said valuation], the vendor and all other necessary parties (if any) shall make and execute to the [each] purchaser a proper conveyance of the property [lot or lots purchased by him]. Such conveyance shall be prepared by

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chaser shall send to Messrs. —— a statement in writing of his further objections or requisitions (if any) arising out of such replies."

(*t*) As to what is a perfect abstract, see *Hobson* v. *Bell*, 2 Beav. 17; *Morley* v. *Cook*, 2 Hare, 111. As to the purchaser's right to rescind if the abstract is not delivered within a reasonable time, see *Compton* v. *Bagley*, [1892] 1 Ch. 313.

(*u*) As to vendor's right to rescind under this condition, see *Re Terry and White*, 32 Ch. D. 14; *Re Jackson and Haden*, [1906] 1 Ch. 412; *Re Simpson and Moy, Ltd.*, 53 Sol. J. 376; *Smith* v. *Wallace*, [1895] 1 Ch. 385; *Quinion* v. *Horne*, [1906] 1 Ch. 596; *Re Deighton and Harris*, [1898] 1 Ch. 458.

(*x*) As to costs of litigation pending at the time of rescission, see *Duddell* v. *Simpson*, L. R. 2 Ch. 102; *Isaacs* v. *Towell*, [1898] 2 Ch. 285; *Re Spindler and Mear*, [1901] 1 Ch. 908.

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and at the expense of the purchaser, and the engrossment thereof shall be delivered at the office of Messrs. —— aforesaid, before the —— day of —— aforesaid; and a draft of such conveyance shall be left not less than —— days before the delivery of the engrossment for perusal and approval on behalf of the vendor and any other necessary parties. Every other assurance and act (if any) which shall be required by the [any] purchaser for getting in, surrendering, or releasing any outstanding estate, right, title, or interest, or for completing or perfecting the vendor's title [to any lot or lots], or for any other purpose, shall be prepared, made, and done at the expense of the purchaser requiring the same; and the expense of the perusal on behalf of and execution by all parties, other than the vendor, of all conveyances or assurances shall be borne by the purchaser [respective purchasers] (*y*).

Sale by trustees, executors or mortgagees (*z*).

21. The vendors being trustees [*or*, "executors," *or*, "mortgagees"], shall be required to give only the statutory covenant against incumbrances implied by reason of their being expressed to convey as trustees [executors] [mortgagees], and the concurrence of the persons beneficially interested [except any person whose consent is necessary to the sale] [*or*, "of the mortgagor"] in any

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Where registration is compulsory.

(*y*) If the property is in a district where registration is compulsory, add, "or the [each] purchaser may, at his option, require the vendor to consent to the registration of such purchaser, or his nominee or nominees, as proprietor or proprietors, under the Land Transfer Acts, 1875 and 1897, of the property [lot or lots purchased by him]."

Where the land is not already registered and any liability remains upon the owner of the legal estate, the following condition should be added:—

"20A. The [each] purchaser shall forthwith procure himself to be registered as proprietor of the property [lot or lots purchased by him], and shall produce the land certificate to the vendor's solicitors within —— days after completion."

As to completion when the land is already registered, see *post*, p. 270.

(*z*) For a condition qualifying the covenants of the vendor where he is selling as tenant for life or as a "limited owner" under the S. L. Acts, and for other special conditions as to the form and contents of the conveyance, see *post*, Special Conditions, p. 255. As to sale by vendor as mortgagee of registered land, see *post*, p. 268, f. 8.

assurance shall not be required. [Any "consenting party" shall not be required to enter into any covenant except that he has not done anything to prevent his consenting.]

I. V. D. stamp: Purchase not to be delayed on account of (*a*).

22. The completion of the purchase [of any lot] shall not be delayed on the ground that neither the contract nor the conveyance is stamped with the appropriate increment value duty denoting stamp, in accordance with sect. 4 of the Finance (1909-10) Act, 1910, but in that case the purchaser shall be entitled to, and shall be satisfied with, the delivery to him on completion of the official form of acknowledgment issued by the Office of Inland Revenue, upon production of which to the Office such stamp may be procured; *or*

I. V. D. stamp (on contract).

22A. On completion, the vendor will produce to the purchaser [of each lot] the contract for sale [of his lot], stamped with the proper increment value duty denoting stamp, and will, at the purchaser's request, produce the same at any time to the Commissioners of Inland Revenue for the purpose of having the conveyance [of such lot] stamped in accordance with sect. 4 (7) of the Finance (1909-10) Act, 1910.

Custody of documents of title on sale in one lot.

23. All muniments of title in the vendor's possession, which relate to property included in the sale, and also to other property, will be retained by the vendor, who will give to the purchaser a statutory acknowledgment of the right to production and delivery of copies thereof, and [*or*, but not] a statutory undertaking for

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(*a*) The increment value duty imposed by sect. 4 of the Finance (1909-10) Act, 1910, is to be paid by the transferor, and any contract to the contrary is void: see Revenue Act, 1911, s. 1. Under the 1910 Act, s. 4 (2), the vendor has to present to the Commissioners the instrument of transfer or particulars thereof for the purpose of assessment of duty; and by sect. 4 (3) any such instrument shall not be deemed to be duly stamped unless it is stamped with one of the three denoting stamps mentioned in that section, viz.: (a) that the I. V. D. has been assessed; (b) that particulars have been delivered to the Commissioners; or (c) that no I. V. D. was payable. When the instrument bears one of these denoting stamps it is to be deemed duly stamped so far as respects that duty. Some delay may occur in getting the conveyance stamped with one of these denoting stamps; but the office issues an acknowledgment on presentation of the conveyance, signed by the vendor but undated, with particulars to enable the duty to be assessed, and when the conveyance is subsequently produced to the office dated, and with the acknowledgment, the proper denoting stamp will be affixed. This condition is framed to meet this question of delay.

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the safe custody thereof (*b*), such acknowledgment [and undertaking] to be prepared by and at the expense of the purchaser.

Custody of documents of title where property sold in several lots.

[23A. The purchaser of the largest part in value of the property held by the same title shall be entitled, after the completion of the sale of all such property, to the custody of such of the muniments of title comprising the same as are in the vendor's possession, and shall give to the purchaser or purchasers of the other parts of the same property a statutory acknowledgment of his or their right to production and delivery of copies of such muniments, and a statutory undertaking for the safe custody thereof. If any part of such property shall not be sold at this sale the vendor shall retain the said muniments until all such property shall be sold, and the purchasers of the lots sold shall in the meantime be entitled, at their own expense, to the production of such muniments and to copies of them, but not to any acknowledgment or undertaking in respect thereof. The vendor shall retain such of the muniments of title in his possession as relate to any of the property offered for sale, and also to other property not included in the sale, and will give to the purchasers of any part of the property comprised in such last-mentioned muniments, a statutory acknowledgment of the right to production and delivery of copies thereof, and [*or,* but not] a statutory undertaking for the safe custody thereof (*b*). All acknowledgments and undertakings which shall be required under any provision of this condition shall be prepared by and at the expense of the purchaser or purchasers requiring the same, and if given by the vendor shall be made determinable on the vendor parting with the muniments therein referred to and procuring (without expense to the purchaser) from the person or persons to whom such muniments shall be delivered similar acknowledgments [and undertakings] to the purchasers or the persons for the time being entitled to the benefit of the vendor's acknowledgments [and undertakings].]

Completion not to be delayed as to one lot pending completion as to others, &c.

[24. Nothing contained in any of these conditions shall entitle any purchaser to delay the completion of his own purchase on account of any delay in the completion of the purchase of any other lot or lots, or to require any covenant for, or acknowledg-

(*b*) If the vendor is a trustee or mortgagee, the obligation to give an undertaking by him will be negatived.

ment of, any right to production of any copy of or extracts from the conveyance of any other lot or lots.]

Non-compliance with conditions (*c*).

25. If the purchaser [any purchaser] shall neglect or fail to comply with the above conditions, his deposit-money shall be forfeited to the vendor, who shall be at liberty, with or without notice, and without tendering a conveyance, to resell the property [lot or lots] in respect of which such default shall occur, either by public auction or private contract, at such time or place, and subject to such conditions and in such manner generally as the vendor shall think fit; and if such resale shall be by auction, the property then offered for sale may be bought in, and the deficiency in price (if any) which shall happen on such resale, and the expenses of, and incident to, the present sale, or such resale, or any unsuccessful attempt to resell, shall forthwith be made good by the purchaser at the present sale, and shall be recoverable as liquidated damages. Any increase of price on such resale shall belong to the vendor.

Memorandum of Contract (*to be indorsed*).

Memorandum of contract (*d*).

I, [*purchaser*], of, &c., hereby acknowledge that at the sale by auction held this —— day of ——, 19—, I was the highest bidder for, and was declared the purchaser of, the property [lot ——] described in the within particulars, subject to the within conditions, at the price of £——, and that I have paid the sum of £—— by way of deposit, and in part payment of the said purchase-money, to Messrs. ——, and hereby agree to pay the remainder thereof, and complete the said purchase, according to the aforesaid conditions.

As witness my hand this —— day of ——, 19—.

[*Signature of Purchaser.*]

(*c*) See *Essex* v. *Daniell*, L. R. 10 C. P. 538; *Soper* v. *Arnold*, 14 App. Cas. 429; *Jones* v. *Burnell*, [1911] W. N. 153.

(*d*) The auctioneer can sign the contract as agent for the purchaser: see *Sims* v. *Landray*, [1894] 2 Ch. 318; *Dewar* v. *Mintoft*, [1912] 2 K. B. 373; or a third person at the instance of the purchaser: *Brooks* v. *Bellingham*, 56 Sol. J. 503. The vendor must be named or described sufficiently for identification in the contract to satisfy sect. 4 of the Statute of Frauds: *Potter* v. *Duffield*, L. R. 18 Eq. 4. See further as to the requirements of the Statute of Frauds, Key & Elph., 10th ed. p. 287. As to the stamp on a contract for sale, see *post*, p. 271.

I. OF FREEHOLDS OR COPYHOLDS.

Purchase-money . . .	£	:	:
Deposit	£	:	:
Balance	£	:	:

As agent for [*vendor*], the vendor (*dd*), I hereby confirm this sale on the within conditions, and acknowledge the receipt of the deposit above mentioned.

[*Signature of auctioneer.*]

Abstract of title to be sent to Messrs. ——.

II. CONDITIONS *of* SALE *of* LEASEHOLDS. VARIATIONS *for* SALE *in* LOTS.

Conduct of sale (*e*).

1. The highest bidder [for each lot] shall be the purchaser; and if any dispute shall arise as to the last or highest bidder, the property [lot] shall be put up at the last previous bidding.

Right to bid reserved.

The vendors reserve the right of bidding for the property [each lot] by themselves or their agents.

Biddings not to be retracted.

2. The biddings shall be regulated by the auctioneer, and no person shall retract a bidding.

Deposit.

3. The [Every] purchaser shall, immediately after the sale, pay a deposit of ten per cent. on his purchase-money to the auctioneer and sign the subjoined agreement.

Fixtures.

4. The fixtures and fittings [on each lot] specified in the inventory thereof to be produced at the sale (*f*), shall be taken and paid for by the purchaser at a price to be declared by the auctioneer at the time of sale, or at a valuation to be made by two persons, one of whom shall be named by either party, and

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(*dd*) As to the implied authority of the auctioneer to sign the contract as agent for the vendor, see *Rosenbaum* v. *Belson*, [1900] 2 Ch. 267.

(*e*) The conditions as to the conduct of sale and biddings may be varied at discretion: see Form 1, *ante*, p. 193, and Special Conditions, pp. 225, 276.

(*f*) Where the fixtures are of a costly nature the inventory should be deposited at the office of the solicitors, or some other convenient place, for inspection by intending purchasers. For other conditions as to valuation of fixtures, &c., see Special Conditions, *post*, p. 246.

his nomination notified in writing to the other party within seven days from the day of sale, or by an umpire to be appointed by the valuers, but if either the vendors or the purchaser shall refuse or neglect to name a valuer, or to notify his nomination as aforesaid, or if the valuer named by either party shall refuse or neglect to act, then the valuation shall be made by the valuer (if his nomination shall have been duly notified as aforesaid) of the other party alone.

Completion and possession.

5. The [Every] purchaser shall pay the balance of his purchase-money and the amount of the said valuation on the —— day of —— next, at the office of Messrs. ——, the vendors' solicitors, at which time and place the purchase is to be completed, and as from that day the outgoings shall be discharged and possession taken by the purchaser, but the purchaser [of any lot] shall not be let into actual possession or receipt of the rents and profits until the completion of the purchase. The rents and outgoings shall, for the purpose of this condition, be apportioned. If from any cause whatever the purchase [of any lot] shall not be completed on the said —— day of —— next, the purchaser shall pay interest on the balance of his purchase-money and the amount of the said valuation, at the rate of five per cent. per annum, from that day until the day of completion. This provision is without prejudice to any right reserved to the vendors by any other of these conditions.

Requisitions (*g*).

6. Within ten days after the delivery of the abstract, all objections and requisitions in respect of the abstract, particulars, or conditions, shall be delivered in writing at the office of Messrs. ——, and all objections and requisitions not so delivered shall be taken to be waived, and the title shall be considered as finally accepted at the expiration of such ten days, subject to such objections and requisitions as shall be delivered within that time, and in this respect time shall be the essence of the contract.

Rescission (*h*).

7. If any objection or requisition whatsoever shall be made by the purchaser [of any lot] as to the title, particulars, conditions, or any other matter or thing relating or incidental to the sale which the vendors are unable or unwilling to comply with, the vendors (notwithstanding any treaty, discussion, or

(*g*) See extension of this condition, *ante*, p. 198, note (*s*).

(*h*) For another form of this condition, see Precedent I., Condition 19, *ante*, p. 199.

II. OF LEASEHOLDS.

litigation in reference thereto, or any attempt to remove or comply with the same), shall have full power to annul the sale upon returning to the purchaser the amount of his deposit, in full satisfaction of all his claims, and without payment of interest, costs or compensation; and the purchaser shall thereupon return to the vendors the abstract of title and other papers which may have been delivered to him or his solicitor by the vendors, but the purchaser may, within seven days from the time of the vendors giving notice of annulment, elect to waive the objection or requisition, and take the property subject thereto.

Commencement of title.

8. The title to the property [each lot] shall commence with the indenture of lease [*or*, "underlease"] (*i*) under which the same is held, as stated in the particulars, and the purchaser thereof shall not be entitled to call for, or make any requisition or objection respecting the lessor's or previous title thereto, although the same may be referred to, or he may otherwise have notice thereof (*k*).

Vendor to endeavour to obtain lessor's licence to assign.

8A. The lease under which the property [lot ——] is held contains a restriction on assignment without licence, which is not to be unreasonably withheld in the case of a respectable and responsible tenant. The vendors will, immediately after the sale, apply for and endeavour to obtain the necessary licence, but if unable to obtain it within three weeks from the day of sale, shall be entitled to rescind the contract for sale, and thereupon the purchaser shall receive back his deposit and make no claim for costs or otherwise. [*Insert any conditions which may be necessary as to title.*]

Repairs and insurance.

9. The [Each] purchaser shall take the property [comprised in the lot purchased by him] in its present condition, and the receipt for the last payment of rent accruing due before the completion of the purchase shall be conclusive evidence that all the covenants and conditions contained in the lease have been observed and performed up to the completion of the purchase, or that all breaches

(*i*) To represent the property as held under a "lease" when it is held under an "underlease" may be a "fatal misdescription": see *Re Beyfus and Masters*, 39 Ch. D. 110. If the lease or underlease under which the property or each lot is held is not set out in the particulars as it ought to be, the date and parties should be given here.

(*k*) As to the exclusion of the right of the purchaser to call for the previous title, see Preliminary Note, *ante*, p. 190.

(if any) of such covenants and conditions have been waived (*l*). The [Each] purchaser shall take over the policy of insurance against fire, and shall pay a proportion of the premium from the day of sale.

Statement as to underleases and tenancies, and offer to produce documents (*m*).

10. The property [Each lot] is subject to the underlease or tenancy [several leases or tenancies] affecting the same [as mentioned in the particulars], and to the rents, covenants, and other terms of lease [underlease] under which the same is held. Counterparts or copies of the underleases or agreements in writing (if any) affecting the property [each lot], and the lease or underlease under which the property [each lot] is held, will be produced at the sale, and may be inspected at any time within the previous week at the office of the vendors' solicitors, and the purchaser, whether he inspect the same or not, shall be considered to have full notice of the contents of all such documents, whether of a usual character or not, and of the terms of the sub-tenancies, notwithstanding any incomplete or inaccurate statement with respect thereto in the particulars or these conditions, and of the state of the property as to repairs, insurance, party walls, and other matters (*mm*). Where the vendors have no counterpart of the underlease or agreement of tenancy, or where there is no written agreement, the purchaser shall accept such evidence of the terms of the tenancy as the vendors may be able to furnish. [*For a condition as to custody of title deeds, see Precedent I., Condition* 23, p. 201.]

Conveyance.

11. Upon payment of the balance of the purchase-money and the amount of the said valuation, at the time and place aforesaid, the vendors and all other necessary parties (if any) shall execute a proper assignment to the purchaser [of each lot], which shall be prepared by and at the expense of the purchaser, and shall be tendered or left at the office of Messrs. —— for execution by the

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(*l*) As to this condition binding the purchaser to accept the receipt as conclusive evidence, see *Lawrie* v. *Lees*, 7 App. Cas. 19. If no such condition is inserted in reliance upon sect. 3 (4), (5) of the C. Act, 1881, the purchaser may adduce evidence of non-performance as a ground for resisting specific performance: *Re Highett and Bird*, [1903] 1 Ch. 287; *Re Taunton, &c. Building Society*, [1912] 2 Ch. 381; 56 Sol. J. 688; and see Preliminary Note, *ante*, p. 191.

(*m*) As to the importance of this condition, see *Molyneux* v. *Hawtrey*, [1903] 2 K. B. 487.

(*mm*) See *Terry* v. *White*, 32 Ch. D. at pp. 23, 24.

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vendors, five days before the time appointed for completion. Such assignment shall contain a covenant by the purchaser for the payment of the rent and the observance and performance of the covenants and conditions contained in the said indenture of lease, and for keeping the vendors indemnified against all actions for the non-payment of the said rent, and the breach, non-observance and non-performance of the said covenants and conditions; and the purchaser shall also (if required) execute and deliver to the vendors a duplicate of the assignment, such duplicate to be engrossed by the vendors at their own cost.

Covenants by trustees' vendors.

[12. The vendors are trustees, and will only give the usual covenant against incumbrances implied by their being expressed to convey as trustees (*n*).]

Apportionment of rents.

[13. Where more than one lot, or parts of more than one lot, are held under the same lease, the rent shall be apportioned between such lots as stated in the particulars, and each purchaser shall take his assignment subject to such rent as is mentioned in the particulars as apportioned to the property assigned to him, and shall not require such rent to be legally apportioned or the consent of the reversioner to such apportionment.]

As to variations in covenants between leases and sub-leases to tenants.

14. No purchaser shall make any objection or requisition on the ground of any discrepancy or variation between any of the covenants or conditions in the lease [underlease] under which the vendors hold and the tenants' leases.

I. V. D. stamp (*nn*).

15. The completion of the purchase [of any lot] shall not be delayed on the ground that neither the contract for sale nor the assignment is stamped with the appropriate increment value duty denoting stamp in accordance with sect. 4 of the Finance (1909-10) Act, 1910, but in that case the purchaser shall be entitled to, and be satisfied with, the delivery to him on completion of the official form of acknowledgment issued by the Office of Inland Revenue, upon production of which to the Office such stamp may be procured; *or*,

I. V. D. stamp on contract.

15A. On completion, the vendor will produce to the purchaser [of each lot] the contract for sale [of his lot], stamped with the proper increment value duty denoting stamp, and will, at the purchaser's request, produce the same at any time to the Commissioners of Inland Revenue for the purpose of having the

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(*n*) See Prec. I., Condition 21, p. 200.
(*nn*) See *ante*, p. 201, note (*a*).

assignment [of such lot] stamped in accordance with sect. 4 (7) of the Finance (1909-10) Act, 1910.

Identity.

16. The property [Each lot] is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all rents, outgoings, rights of way, and other easements (if any) affecting the same, and if any error, misstatement, or omission in the particulars [*or*, plan] or these conditions shall be discovered, the same shall not annul the sale, nor shall any compensation be allowed to either the vendors or purchaser in respect thereof (*o*).

Power to sell on default.

17. If the purchaser [of any lot] shall neglect or fail to comply with the above conditions, or any of them, his deposit-money shall be forfeited to the vendors, who shall be at liberty (without tendering an assignment) to resell the property, either by public auction or private contract, and at such time and subject to such conditions, and in such manner in all respects as the vendors shall think proper; and any deficiency in price on such second sale, together with all costs attending the same shall, immediately after such second sale, be made good to the vendors by the defaulter at this present sale, and in case of non-payment shall be recoverable by the vendors as liquidated damages, and any increase of price at such resale shall belong to the vendors.

MEMORANDUM (*ante*, p. 203).

III. CONDITIONS *of* SALE *of a* BUILDING ESTATE *under a* BUILDING SCHEME, *with* VARIATIONS *for* REGISTERED LAND (*oo*).

Conduct of sale (*p*).

1. The highest bidder for any lot shall be the purchaser, and if any dispute arise between two or more bidders the dispute in question shall be settled by the auctioneer. No person shall advance at any bidding less than 10*l*., nor retract his bidding. The vendors reserve their right to bid by themselves or their agents.

Right to bid reserved.

(*o*) See *ante*, p. 198, note (*p*).

(*oo*) As to what constitutes a building scheme, see *Reid* v. *Bickerstaff*, [1909] 2 Ch. at p. 319; and see Key & Elph., 10th ed., vol. i., p. 293, note (*b*); *Millbourn* v. *Lyons*, [1914] 2 Ch. 231; *Willé* v. *St. John*, [1910] 1 Ch. 325. As to framing restrictive covenants where there is no building scheme, and generally as to such covenants, see K. & E., 10th ed., vol. 1, pp. 373 *et seq.*

(*p*) For other conditions as to conduct of sale and biddings, see preceding Precedents and Special Conditions, pp. 225, 226.

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Deposit. 2. Each purchaser shall immediately after the sale pay to the auctioneer a deposit of ten per cent. upon the amount of his purchase-money to the auctioneer, and sign the subjoined agreement.

Completion. 3. The purchaser of each lot shall pay the remainder of his purchase-money on the —— day of —— next, at the office of the vendors' solicitor, Mr. ——, No. —, —— Road, at which time and place the purchase shall be completed, and as from that day the outgoings shall be discharged and possession taken by the purchaser, but no purchaser shall be let into actual possession until the completion of his purchase. The outgoings shall, for the purpose of this condition, be apportioned. If from any cause whatever the purchase of any lot shall not be completed on the said —— day of ——, the purchaser thereof shall pay to the Interest. vendors interest after the rate of five per cent. per annum on the remainder of his purchase-money from that day until the completion of his purchase, but this provision is without prejudice to the vendors' rights under any other of these conditions.

Requisitions. 4. All objections and requisitions in respect of the title to any of the lots, or the abstract, particulars, or these conditions (*q*), or anything appearing therein respectively, shall be stated in writing and sent to the vendors' solicitor within ten days from the delivery of the abstract, and all objections and requisitions not sent within that time shall be considered to be waived, and in this respect time shall be deemed to be the essence of the contract (*r*). Power to rescind. If any purchaser shall make any objection or requisition which the vendors shall be unable or unwilling to remove or comply with, the vendors shall be at liberty (notwithstanding any intermediate negotiation or litigation in reference to such objection or requisition or attempt to remove or comply with the same) to rescind the contract for sale to such purchaser upon giving to him not less than ten days' notice in writing, and thereupon, if the objection or requisition shall not in the meantime be withdrawn, the sale to such purchaser shall, at the expiration of the notice, be annulled, and in that case the purchaser shall be entitled to repayment of his deposit-money, without interest, costs, or expenses, in full satisfaction of all claims and demands, and shall thereupon return all abstracts and documents in his possession belonging to the vendors.

(*q*) See *Terry* v. *White*, 32 Ch. D. pp. 24, 25; *Re Deighton and Harris*, [1898] 1 Ch. 458.

(*r*) See *ante*, Prec. I., Condition 18, note (*s*), p. 198.

III. BUILDING ESTATE.

5. The property, which forms part of the —— estate, has been plotted out as shown on the plan annexed to the particulars, and is now offered for sale in lots as a building estate in accordance with a general scheme applicable to the whole of the property and subject to and with the benefit of the stipulations contained in the schedule hereto. Each purchaser shall be bound to observe and perform such of the said stipulations as shall be applicable to the lot or lots purchased by him for the benefit of the purchasers of the remaining lots, and the conveyance to each purchaser shall contain covenants by the purchaser with the vendors, and separately with each purchaser, to whom an assurance of any lot or lots shall have been previously made, to observe and perform the said stipulations; such covenants to be framed so as to bind the lot or lots purchased, as far as possible, into whosesoever hands the same may come, but not so as to bind the covenantor for any breach which shall occur after he has parted with the property. But this condition shall not entitle any purchaser to be made a party to the conveyance to any other purchaser, or to make any requisition or inquiry in relation thereto.

Building scheme (*s*).

6. As to any part of the property which may not be sold at the present sale, or the sale of which shall not be completed, the vendors shall be at liberty to sell or dispose thereof free from the said stipulations, and in such lots, and subject to such conditions, restrictions, and stipulations as they shall think proper.

Vendors to be at liberty to sell the unsold lots free from the stipulations.

7. The title shall commence as to all the property with an

Commence-

(*s*) If the land is registered with a possessory title, then in place of Condition 5 as above insert the following condition:—

"5. The property, forming part of the —— estate, has been plotted out in accordance with a building scheme, No. ——, filed in the Land Registry, under the Title No. ——, applicable to the whole property, the sale plan being a reduced copy of the plan No. ——, filed under the same title, and the property is now offered for sale as a building estate in the lots numbered for sale in the said plan, subject to and with the benefit of the stipulations contained in the said scheme which are set out in the schedule hereto, but this condition shall not entitle any purchaser to be made a party to any assurance to any other purchaser, or to make any requisition or inquiry with respect thereto."

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indenture, &c. [*or*, "as to Lots 1 and 2, with, &c., and as to Lots 3, 4, and 5, with, &c."] [*Here insert special conditions as to title.*]

ment of title.

Identity of parcels.

8. Every purchaser shall admit the identity of the property purchased by him with that described in the muniments of title upon the evidence afforded by a comparison of the descriptions in the particulars and muniments, and such other evidence (if any) as the vendors can supply. The vendors shall not be required to explain or reconcile any differences or discrepancies in the descriptions as to quantity or otherwise.

Recitals, &c. to be evidence.

9. Every recital or statement, whether of fact or conclusion of law, contained in any abstracted deed, will, or other document, dated [fifteen] years prior to the day of sale, shall be sufficient evidence of the fact, conclusion, or matter so recited or stated, and of the contents and due execution of such deed, will, or other document (*t*).

As to errors in description, &c. (*u*).

10. Each lot is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all chief, quit, and other rents and outgoings, easements (if any), and incidents of tenure affecting the same. If any error, misstatement, or omission in the particulars or these conditions shall be discovered, the same shall not annul the sale, nor shall any compensation or allowance be made in respect thereof (*w*).

Stamping of documents.

11. [*See Precedent I., Condition* 16.]

Registration.

12. [*See ibid., Condition* 15.]

Conveyance.

13. Upon payment of the remainder of his purchase-money, each purchaser shall be entitled to a proper assurance of the lot or lots purchased by him (*x*), such assurance to be in accordance

(*t*) See Preliminary Note, *ante*, p. 191.

(*u*) In the case of registered land, say,

"The property which is sold according to the plan No. ——, filed in the Land Registry, under the above title, is believed, &c.," and add to the condition,

"The sale plan is only intended to indicate the position of the lots and roads, and is not to be taken as being accurate as to dimensions."

(*w*) As to the importance of specifically mentioning easements, charges, &c. known to affect the property, see *ante*, p. 196, note (*l*); and as to what discrepancies come within this clause, see *ante*, p. 198, note (*p*).

(*x*) In the case of registered land, add,

"to be effected by an unregistered conveyance and a proper transfer."

with printed forms which will be delivered to each purchaser on his acceptance of the title. The blanks in such printed form shall be filled, and any alterations necessitated by the death of parties or other matters prior to completion shall be made by and at the expense of such purchaser, who shall, on completion, execute and deliver to the vendors a duplicate (*y*) of such conveyance, to be prepared at the vendors' expense. Copies of such printed forms will be produced at the sale, and may be seen at the office of the vendors' solicitors at any time within —— days prior to the sale, and each purchaser, whether he inspects such copies or not, shall be considered to purchase with full notice and approval of the contents of the said printed forms.

Notice of conditions to be endorsed on title deed (*yy*).

14. Notice of these conditions shall be endorsed on the conveyance to the vendors, dated the —— day of ——, of the property now to be sold.

15. [*If the vendors are trustees or mortgagees, add Condition* 21, *Precedent I.*, p. 200.]

Custody of title deeds.

16. [*Custody of title deeds, see Precedent I., Conditions* 23 *and* 23A, *ante*, pp. 201, 202; *and special conditions, post*, p. 262.]

As to increment value duty stamp.

17. The completion of the purchase of any lot shall not be delayed on the ground that neither the contract for sale nor the conveyance is stamped with the appropriate increment value duty stamp, in accordance with sect. 4 of the Finance (1909-10) Act, 1910, but in that case the purchaser shall be entitled to, and shall be satisfied with, the delivery to him, on completion, of the official form of acknowledgment issued by the Inland Revenue Office, upon production of which to the Office such stamping may be procured. [*See ante*, p. 201.]

Failure to comply with conditions.

18. If any purchaser shall neglect or fail to comply with these conditions, his deposit-money shall be forfeited to the vendors, who shall be at liberty, with or without notice, and without previously tendering a conveyance to the defaulter, to resell the lot or lots in respect of which such default shall occur, either by public auction or private contract, and the deficiency of price

(*y*) In the case of registered land, say,

"a duplicate counterpart unregistered conveyance."

And after this condition add conditions as to provisional registration or priority notice, for which see Special Conditions, p. 269, Forms 15 and 14.

(*yy*) See the provisions of the C. Act, 1911, s. 11, which do not apply to dispositions of land registered under the L. T. Acts, 1875 and 1897.

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(if any) which shall happen on such resale, and all expenses incidental to the present sale, or such resale, or any attempted sale, shall forthwith be made good and paid by the defaulter at the present sale as liquidated damages, and any increase of price on such resale shall belong to the vendors.

Schedule of Stipulations.

For the General Protection and Advantage of Residents on the Estate.

Fines.

1. Each purchaser shall, within one calendar month after being let into possession of the land purchased by him, make, and for ever afterwards maintain in good repair, good and sufficient boundary fences thereon, next to the road or roads on which the same fronts, and also at the sides or back thereof marked "T" within the boundary on the plan annexed to the particulars, of a height not less than five feet, nor more than six feet, at the sides and back, and not more than four feet six inches in front, such fences to be constructed of brick or oak park paling.

Building line.

2. The line of frontage of the buildings on the several lots shall not approach nearer to any of the roads than the line marked "building line" on the said plan, except verandahs, bay windows, porches, or similar structures, which shall not project more than —— feet beyond such line.

Houses to be built.

3. Not more than one detached house, or two semi-detached, shall be erected on one plot, or two detached, or four semi-detached houses on three plots, without the written consent of the vendors. All houses shall be erected in a substantial and workmanlike manner of new materials, and of the like elevation, and of a similar character to the houses already built upon the estate, according to plans and elevations to be submitted to the vendors for their approval before the works are commenced. Such houses shall cost in labour and materials (exclusive of coach-house and stables) not less than the amounts following:—

In the —— Road, detached houses, £—— each; semi-detached houses, £—— each.

In the —— Road, detached houses, £—— each; semi-detached houses, £—— each.

In the —— Avenue, detached houses, £—— each; semi-detached houses, £—— each.

[On the plots —— to —— inclusive, on the said plan, in ——

Street, shops may be built, the cost, as aforesaid, to be not less than £—— each, or private dwelling-houses, costing, if detached, not less than £—— each, or, if semi-detached, not less than £—— each.]

Private dwelling-houses only.

4. No building shall be erected on any lot [except the said lots numbered —— and —— on the said plan] other than a private dwelling and coach-house, stables, motor-house or garage, offices, and outbuildings thereof. And no building so erected shall be used for any purpose other than as a private dwelling-house.

No temporary erection to be placed on lots.

5. No temporary erection or shed of any kind shall be placed on any lot other than sheds or workshops to be used for purposes incidental to and during the erection of permanent buildings thereon, and no caravan, stall, swing, or house on wheels shall be placed or allowed to remain on any lot.

Gravel, &c. not to be removed.

6. No gravel, sand, chalk, turf, or earth on any lot shall be dug or excavated beyond that which it may be necessary to remove for the purpose of laying the foundations, basements, or approaches, or for use in the buildings.

Public-house.

7. Lot No. —— on the plan has been reserved for an inn, hotel, or public-house, and shall not be used for any other purpose without the consent in writing of the vendors, but may, with such consent, be used for the purpose of a private dwelling-house or shop. Provided always, that if the purchaser, after using his best endeavour to get the premises fully licensed, shall be unable to obtain such licence, then lot —— may, without such consent, be used for a private dwelling-house only, or, with such consent, as a shop.

Offensive trades, &c.

8. No operative machinery shall be fixed or placed on any lot. Nor shall any lot, or the buildings to be erected thereon, be used for any offensive, noisy, or dangerous trade, business pursuit or occupation (*z*), or for any purpose which shall be in any way a nuisance, injury, or annoyance to the vendors, their heirs, or

(*z*) Sometimes specified trades or businesses are forbidden, as, for instance,

["Save as is hereinbefore expressly provided] no lot, or any building thereon, shall be used as a hotel, tavern, or public-house, or for the sale of spirituous liquors, or as a hospital, asylum, church, chapel, mission-house, or school, or for any offensive, noisy, or dangerous trade," &c.

As to what are offensive businesses, see *Tod-Heatly* v. *Benham*, 40 Ch. D. 80; *Wauton* v. *Coppard*, [1899] 1 Ch. 92.

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assigns, or their tenants, or to the owners or occupiers of any adjoining property, or which may tend to depreciate the value of the rest of the estate as a residential estate.

Roads.

9. The sites of the several roads shown on the said plan, which are now private roads, will be retained by the vendors, who will grant to the respective purchasers a right of way over the said roads for all purposes, reserving to themselves, their heirs and assigns, the right to make sewers or drains, gas or water mains thereunder, and every purchaser, in proportion to the extent of the frontage of the lot or lots purchased by him towards any such road, shall contribute with the owners of other lots fronting the same road to the expense of keeping the same in repair, until it shall be taken over and become repairable by the local authority, and also to the cost and charges of, and incidental to, the making up of such road upon its being so taken over by the local authority.

MEMORANDUM (*ante*, p. 203).

IV. CONDITIONS *of* SALE *of* REVERSIONARY INTERESTS, POLICIES *of* ASSURANCE, ANNUITIES, *and other* CHOSES *in* ACTION.

General Conditions.

Biddings.

1. The highest bidder for each lot shall be the purchaser, the vendor reserving the right to bid. No bidding shall be retracted, and if a dispute shall arise as to any bidding the lot in dispute shall be put up again. The amount of advance for each bidding shall not be less than £—— for lots —— and ——, £—— for lots —— and ——, and £—— for lots —— and ——.

Deposit.

2. Each purchaser shall, at the close of the sale to him, pay to the auctioneers a deposit of twenty per cent. on his purchase-money, and sign an agreement in the form subjoined, and shall pay the residue of the purchase-money at the offices of the respective vendors' solicitors on the —— day of ——, at which place and time the purchase shall be completed. If from any cause other than the vendor's wilful neglect or default, any purchase shall not be completed on that day, the purchaser shall pay interest on his unpaid purchase-money at the rate of five per cent. per annum from that day until completion, subject and without prejudice to the vendor's rights under the last of these conditions.

When pur-

3. On the completion of the purchase of any lot, the pur-

chaser shall become entitled thereto (1) in the case of any life interest in possession, as from the day fixed for completion, together with the current income accrued due but not then payable; (2) in the case of any annuity in possession, as from the last day for payment preceding the day fixed for completion; and (3) in the case of any reversionary interest or policy, as from the day of sale.

Purchaser to become entitled.

4. The vendor will pay all premiums on policies falling due after the sale, but before completion, such payment, with interest in the meantime at four per cent. per annum, to be refunded to the vendor by the purchaser on completion.

Premiums on policies.

5. Each lot is sold subject to death duties (if any) becoming payable in respect thereof, and subject also to the special conditions relating to such lot. In case of discrepancy between such special conditions and these general conditions, the special conditions shall prevail.

Sale subject to death duties, &c., special conditions.

6. Upon payment of the residue of his purchase-money, the vendor will execute to each purchaser a proper assurance or transfer of the lot or lots purchased by him. In any case where the vendor is selling as executor, trustee, or mortgagee, he shall not be required to enter into any covenant except the express or statutory implied covenant that he has not incumbered.

Conveyance.

7. Each purchaser shall deliver in writing to the vendor's solicitors his objections and requisitions (if any) on the title, particulars, or conditions, within —— days after the delivery of the abstract, and every objection or requisition not so stated shall be taken to be waived, and if no objection or requisition shall be so stated, the title shall be taken to be accepted, and for these purposes time shall be of the essence of the contract (*a*).

Requisitions.

8. If any purchaser shall make and insist on any objection or requisition which the vendor shall be unable or unwilling to answer or comply with, the vendor may, notwithstanding any previous negotiation or litigation, on giving to the purchaser not less than ten days' notice in writing, annul the sale, in which case, unless the objection or requisition is in the meantime withdrawn, the sale shall, at the expiration of the notice, be annulled, the purchaser being thereupon entitled to a return of his deposit, but without interest, costs, or expenses.

Rescission.

9. No objection or requisition shall be made on the ground

Absence of legal covenant

(*a*) See extension of this condition, *ante*, p. 198, note (*s*).

IV. REVERSIONARY INTERESTS, &c.

of the absence of an express covenant or a statutory acknowledgment for the production and delivery of copies of any documents of title where, on completion, the purchaser will have an equitable title to the production of such documents.

to produce deeds (*a*).

Errors or omissions.

10. If any error, misstatement, or omission shall be discovered in the description of any lot, or as to the ages of parties, or in any other respect, the same shall not annul the sale, but a reasonable compensation, if demanded in writing before completion, shall be allowed or paid by the vendor or the purchaser, as the case may be, the amount thereof to be fixed by two referees to be appointed by each party, or their umpire, pursuant to the Arbitration Act, 1889, whose decision shall be final.

Non-compliance with conditions.

11. [*Non-compliance with conditions, see Precedent III., Condition* 18, *ante*, p. 213.]

Lot 1.

Policy of assurance.

A policy of assurance for the sum of £——, in the —— Assurance Society, on the life of a person born on the —— day of ——, under the annual premium of £——, payable on the —— of ——. Bonus additions to December 31st, 19—, £——.

Solicitors: Messrs. A. B. & Co., No. —, Gray's Inn Square.

Special Conditions.

1. The title shall commence with the policy [an indenture of settlement, dated, &c.].

Receipt for premium.

2. The production of the receipt for the last premium payable before completion shall be accepted as sufficient evidence that the policy is in full force.

Evidence of age.

3. No evidence shall be required of the age of the assured, or as to the nature and truth of the statements upon which the policy was effected.

Insurable interest.

4. It shall be assumed that the person to whom the policy was granted had an insurable interest in the life assured (*b*).

Lot 2.

Life interest.

The life interest in possession of a lady born on the —— day

(*a*) The third sub-section of sect. 2 of the V. & P. Act, 1874, applies only to the sale of land.

(*b*) As to insurance by one person on the life of another, see 14 Geo. 3, c. 48, s. 1; and *A.-G.* v. *Murray*, [1904] 1 K. B. 165; *Harse* v. *Pearl Life Insurance Co.*, *ibid.* 558; *Griffiths* v. *Fleming*, [1909] 1 K. B. 805. See other conditions as to policies, Special Conditions, *post*, p. 238.

of ——, in a ——th share of the income of a trust fund now represented by the investments and property specified in the schedule below.

SCHEDULE.

[*Set out the trust funds.*]

Solicitors: Messrs. —— [*name and address*].

Special Conditions.

1. The title shall commence with the will [an indenture of settlement], dated, &c.

Evidence as to trust funds.

2. A statement by the trustees of the said will [settlement] that the trust funds are fully and correctly stated in the above schedule shall be accepted as conclusive evidence that such is the case.

Evidence of age.

3. The certificate of her birth, verified by the statutory declaration of ——, shall be deemed to be conclusive evidence of the age of the tenant for life.

4. [No] Succession duty [at the rate of —— per cent.] will be payable on the lady's death.

5. The purchaser shall assume that estate duty will be payable on the death of the lady at the rate at which it would be payable if she died immediately after completion and there was no aggregation (*c*).

LOT 3.

Contingent reversion.

A contingent reversion in one ——th of a trust fund now represented by the investments specified in the schedule below, receivable on the death of a person born on the —— day of ——, who has not been married, in the event of his leaving no child. The —— Assurance Society will entertain a proposal for an insurance to cover the risk above referred to at a single premium of £——.

SCHEDULE.

[*State particulars of funds.*]

Solicitors: Messrs. —— [*name and address*].

Special Conditions.

1. The title shall commence, &c.

(*c*) It is not advisable to state the rate at which estate duty will be payable.

IV. REVERSIONARY INTERESTS, &c.

2. A statement by the trustees of the said will [settlement] as to the correctness of the above schedule shall be accepted as conclusive evidence thereof.

Evidence of trust funds.

3. A statutory declaration to be made by —— shall be accepted as conclusive evidence that the person above referred to has not been married; and a certificate of birth verified by a like declaration shall be deemed conclusive evidence of his age.

LOT 4.

Annuity charged on income of trust funds.

An annuity of £—— per annum, payable during the life of a lady born on the —— day of ——, and charged upon or payable out of the income of the trust funds specified in the schedule below.

SCHEDULE.

[*Set out the trust funds.*]

Solicitors: Messrs. —— [*name and address*].

Special Conditions.

[*These will be the same as in Lot* 2.]

MEMORANDUM.

[*See Precedent I.*, p. 213.]

V. CONDITIONS *of* SALE *of* SHARES *and* MORTGAGE DEBENTURES.

Biddings.

1. The highest bidder for each lot shall be the purchaser thereof, the vendor reserving the right to bid. No bidding shall be retracted, and if a dispute shall arise as to any bidding the lot in dispute shall be put up again.

Deposit and completion.

2. The purchaser of each lot shall, at the close of the sale to him, pay to the auctioneers a deposit of 20 per cent. upon and in part payment of the purchase-money, and furnish his full name and address, and (as regards the shares in the — — Life Assurance Society) his qualification to hold shares, to the auctioneers, and also sign the contract hereto subjoined, and shall pay the remainder of the purchase-money on the —— day of ——, 19—, at the office of Messrs. ——, the vendor's solicitors, situate at ——, in the county of ——, at which time and place the purchases shall be completed. If from any cause whatever, other than the vendor's wilful neglect or default, any purchase shall not be com-

Interest.

pleted on the before mentioned day, the purchaser shall pay interest on his unpaid purchase-money, after the rate of 5 per cent. per annum, from that day until the completion of his purchase, subject and without prejudice to the rights reserved to the vendor by the last of these conditions.

Arrangement for transfers.

3. The vendor will, within seven days after the close of the sale, forward the statement of the name and address, and (where necessary) qualification to hold shares, of the respective purchasers to the secretaries of the respective companies, with a request that a transfer may be prepared. Upon payment of the residue of the purchase-money the vendor will execute transfers of the shares and of the debentures to the respective purchasers.

Inquiries as to title of vendor.

4. All inquiries (if any) as to the vendor's title are to be made by and at the expense of the purchasers requiring the same, and all other things to be done, or expenses to be incurred in or about the verification of the vendor's title, or the transfer and registration of the shares and debentures into and in the names of the respective purchasers, are to be at their expense. If any purchaser of shares shall not be accepted by the board of directors of the company before the said —— day of ——, 19—, or if the purchaser shall, at any period prior to completion of the purchase, make any objection or requisition as to title or otherwise, which the vendor shall be unable or unwilling to comply with on any ground, and notwithstanding any intermediate negotiation, the vendor may, by notice in writing to the purchaser, rescind the contract for sale. In such case the vendor will, within one week after such notice, repay to the purchaser his deposit-money, which is to be accepted by him in satisfaction of all claims on any account whatever, and without payment of interest or costs.

Power to rescind.

Compensation.

5. If any error or misstatement shall be discovered in the particulars the same shall not annul the sale, but an allowance or compensation shall be made by or to the vendor, as the case may be, the amount, in case of dispute, to be settled by arbitration in the usual way.

Power of resale on default.

6. If any purchaser shall fail to comply with any of these conditions, and to complete his purchase agreeably thereto, the deposit-money of the defaulting purchaser shall be absolutely forfeited to the vendor, who shall be at liberty to resell the lot without notice or tender of a transfer or assignment, and any deficiency

V. OF SHARES AND MORTGAGE DEBENTURES.

in price, with the attendant costs, shall be paid by such purchaser and recoverable from him as liquidated damages.

MEMORANDUM OF CONTRACT (*ante*, p. 203).

VI. CONDITIONS *of* SALE *of* FURNITURE *or other* GOODS (*d*).

Conduct of sale.

1. The highest bidder shall be the purchaser, and if any dispute shall arise respecting any bidding, the lot shall be put up again, or not, at the auctioneer's discretion, to whom is reserved the right of refusing any bidding and of withdrawing any lots from the sale.

Biddings.

2. No person shall advance at any bidding up to 1*l.* less than one shilling; nor at any bidding from 1*l.* up to 2*l.* less than two shillings; and so on in proportion.

Deposit, &c.

3. The purchaser of each lot shall, if required, pay down immediately a deposit of 25 per cent. in part payment of his purchase-money, and shall give his or her name and address; such deposit shall be applicable, at the auctioneer's discretion, in or towards payment for any of the lots bought by such purchaser.

Completion. Compensation.

4. The lots shall be paid for before four o'clock the day after the sale, whether genuine and authentic or not, with all faults and errors of description, and cleared and removed at the purchaser's expense and risk, the auctioneer not being responsible for the correct description, genuineness, or authenticity of, or for any fault or defect in any lot, and making no warranty whatever (*e*). If from any cause the auctioneers are unable to deliver a lot the deposit money shall be returned, but without compensation for non-delivery.

5. The auctioneer may sell two or more lots as one lot, and may withdraw any lot or lots, and may alter these conditions at the time of sale.

Power to resell on default.

6. On failure of any purchaser to comply with the above conditions, the money deposited by him in part payment as aforesaid shall be forfeited; and all lots not cleared as aforesaid shall, without notice, be resold by public or private sale, and the deficiency (if any), as well as the expenses of such resale, shall be

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(*d*) See Sale of Goods Act, 1893.

(*e*) As to warranty, see Goodeve, P. P., 5th ed., p. 69; and see *Clayton* v. *Le Roy*, [1911] 2 K. B. 1031.

made good by the defaulters at this present sale, and shall be recoverable as liquidated damages, and any increase in price on such resale shall belong to the vendor. VI. OF FURNITURE OR OTHER GOODS.

VII. CONDITIONS *of* SALE *by* TENDER.

1. Any person desirous of competing for the purchase of the property described in the particulars, shall subscribe his name and address to the tender subjoined to these conditions, and forward the same, under seal, to the office at —— of the vendor's solicitor, Mr. ——, on or before the —— day of ——, 19—. Date for delivery of tenders.

2. The vendor shall have the unqualified right of selecting any tender, or rejecting any tender, and if any tender shall be accepted, the vendor shall give notice of his acceptance by letter, transmitted by post, to the person making the accepted tender, according to the address given in the same, within eight days from the said —— day of ——, 19—. Acceptance of tender.

3. Within two days after the receipt of the said notice, the purchaser shall pay to the vendor's solicitor, as stakeholder, a deposit of —— per cent. on the amount, and in part payment of his purchase-money, and sign the subjoined agreement. Deposit.

4. The conveyance [assignment] of the property purchased shall be prepared by and at the expense of the purchaser. Conveyance.

5. The remainder of the purchase-money shall be paid to the vendor's solicitor, at his said office, on the —— day of ——, 19—, at which time and place the conveyance [assignment] shall be delivered and the purchase completed. Completion.

6. The title shall commence with an indenture of conveyance by way of sale, dated the —— day of ——, 19— (*f*). Commencement of title.

7. The purchaser shall admit the identity of the property purchased with that comprised in the muniments offered by the vendor, as the title to such property, upon a declaration to be furnished (if required) at the purchaser's expense, that the purchased property has been possessed for the last thirty years under the said title. Identity.

8. The purchaser shall deliver in writing any objections or requisitions he may desire to make in respect of the title or otherwise within ten days from the day of the delivery of the abstract, Requisitions and rescission.

(*f*) Add any conditions as to title or other matters which may be necessary.

VII. BY TENDER.

and in default of such objections and requisitions (if none), and subject to such (if any), shall be deemed to have accepted the title. If any objection or requisition whatsoever shall be made by the purchaser as to the title or otherwise which the vendor shall be unable or unwilling to comply with, then the vendor shall have full power at any time, by notice in writing to be given to the purchaser or his solicitor, to annul the sale, and shall thereupon return to the purchaser his deposit in full satisfaction of all his claims, and without payment of interest, costs, or other compensation whatever, and the purchaser shall thereupon return to the vendor all papers which may have been delivered to him by the vendor.

Compensation.

9. The property is believed, and shall be taken to be, correctly described as to quantity and otherwise, and is sold subject to all easements (if any) subsisting thereon, and if any error, or misstatement, or omission in the above particulars shall be discovered, the same shall not annul the sale, and no compensation is to be made or allowed to the purchaser in respect thereof.

Power of resale.

10. If the purchaser shall not pay the balance of his purchase-money at the time specified, and in all other respects perform these conditions, the said deposit shall be forfeited; and it shall be in the option of the vendor to annul the sale and to resell the property either by tender or by public auction or private contract, at such time and subject to such conditions and in such manner as the vendor shall think proper; and any deficiency in price on such second sale, together with the costs attending the same, shall immediately after such second sale be made good to the vendor by the defaulter at the present sale, and in case of non-payment shall be recoverable by the vendor as liquidated damages.

Form of Tender.

Form of tender.

To Mr. [*vendor*].

I hereby offer to purchase the property described in the annexed particulars, subject to the above written conditions of sale, at the price of £——, and agree to pay the said purchase-money in accordance with the said conditions, and in all other respects to observe and perform the stipulations therein contained and on the part of the purchaser to be observed and performed.

Signature in full ——.

Residence ——.

Date ——.

SPECIAL CONDITIONS OF SALE.

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I. Biddings and Mode of Sale.

First bidding.

1. Each lot shall be put up at a sum to be fixed by the auctioneer at the time of sale.

Advances in bidding.

2. No person shall advance a less sum at each bidding than shall be named by the auctioneer at the time of putting up each lot, or retract any bidding.

3. No person shall advance less than £—— at any bidding, or retract any bidding.

4. No person shall advance less than 20*l.* at any bidding, on lots —, —; 10*l.* on lots —, —; 5*l.* on lots —, —, —; and 2*l.* on each of the other lots; or retract any bidding.

Mode of selling to be fixed at the time of sale.

5. The estate will be first offered in one lot, and if not so sold, then in the lots mentioned in the particulars, or in such other lots as may be determined on at the time of sale, and subject to such conditions as may be then produced. The auctioneer shall declare the mode of bidding immediately before the sale. The vendor, his solicitor or agent, shall be allowed to bid [once], and the highest bidder shall be the purchaser; no bidding shall be retracted; and if any dispute arise respecting any bidding, the lot shall be put up again at the last undisputed bidding.

I. BIDDINGS AND MODE OF SALE.

Reserved bidding.

6. The property is offered for sale subject to a reserve price; the vendor reserves the right of bidding himself or by his agents, as often as he or they shall think proper.

Sale without reserve.

7. The property is offered for sale without reserve.

Right to re-arrange and withdraw lots and to refuse biddings.

8. The vendor reserves to himself the right to consolidate two or more lots into one lot, and to divide any lot into separate lots.

9. The vendors reserve the right either before or at the auction to put any two or more lots together, or to subdivide any lot or lots, and also to vary the arrangement of the lots, or any of them, and also to withdraw from the sale any lot or lots, without declaring the reserve price, and to refuse any bidding. No representation at or before the time of sale shall be binding on the vendors unless reduced into writing, and any addition to these conditions or to the particulars, or any alteration therein, if made in writing, but not otherwise, shall be obligatory as conditions of sale.

Right to make alterations in sale plan.

10. The vendor reserves the right, in case any of the lots shall be withdrawn, or shall remain unsold at the present sale, to make any alterations he shall think advisable in the intended arrangements for laying out the property offered for sale, and for making roads and other works thereon, indicated by the sale plan annexed to the particulars.

II. Expenses of Sale—Completion—Delivery of Possession and Payment of Outgoings.

Purchaser to discharge claims of outgoing tenants.

1. The purchaser of each lot shall be entitled to the possession of the lot purchased by him from the said —— day of —— next, and shall at his own expense ascertain, pay, and discharge all moneys and payments to which the tenants under the now existing tenancies of the property will become entitled in respect of such lot as outgoing tenants on the expiration of their tenancy, all other outgoings up to the said —— day of —— being cleared by the vendor, and such other outgoings shall for the purpose of this condition be apportioned.

Purchaser to pay expenses of sale.

2. All expenses of and incidental to the investigation, verification, or completion of the abstract, or the title or the preparation, perusal, and execution of the conveyance, and any other deeds and all other costs and charges relating to the sale, shall be borne by the purchaser.

II. EXPENSES OF SALE, COMPLETION, &C.

Possession given before completion.

3. On signing the subjoined agreement and paying the deposit and all outgoings, the purchaser shall be let into possession of the property, and shall pay interest on the balance of the purchase-money at the rate of 4 per cent. per annum until the —— day of —— next, and at the rate of 5 per cent. per annum from that day until actual completion if the purchase is not then completed. The purchaser shall not be deemed to have accepted the title by reason of such possession, and no alteration shall be made in the property by the purchaser prior to completion. If the sale is annulled the purchaser shall pay interest at the rate aforesaid to the date of such annulment, and shall give up possession to the vendor, and pay for dilapidations (if any), reasonable wear excepted, and shall have no claim against the vendor for expenditure on the property.

Fines accrued due before completion on a sale of manors.

4. Where the right or title to admission to copyhold lands has accrued before the said —— day of ——, the fines payable in respect of such admission shall belong to the vendor, though the same may not be paid or payable until the holding of a Court at a date later than the said —— day of ——: and the purchaser on becoming lord of the several manors shall be bound not to compound or release such fines.

Copyhold rents—apportionment.

5. The costs, fees, and charges of and incidental to the apportionment of the lord's rent and fines shall be paid by the respective purchasers in such proportions as the steward of the manor shall determine.

Delivery of possession to purchaser before completion (*a*).

6. The vendors will permit the purchaser of the property, without prejudice to any question on the title, to take possession of such portion of the property as may be unoccupied, for the purpose of cultivating it in a proper and husbandlike manner, upon the balance of the purchase-money being deposited in Messrs. —— & Co.'s Bank in the joint names of the vendors and the purchaser, to await the completion of the purchase, or the vendors will, at the request and expense of the purchaser, do such things as may be necessary for the due cultivation of the land. But in default of such entry or request the vendors shall not be bound to see to the management or cultivation of the property.

(*a*) This may easily be adapted to the sale of business premises. As to entry before completion, see *post*, p. 302, note (*y*).

III. DELIVERY OF ABSTRACT.

III. Abstract (*b*).

Title commencing with old lease (*c*).

1. The vendor will furnish an abstract of the lease, dated the —— day of ——, under which the property is held, and of an assignment thereof, dated the —— day of ——, and the subsequent title, and the purchaser shall assume without question the validity of the lease, and shall make no objection or requisition in respect of the intermediate title between the lease and the said assignment, notwithstanding any reference to such title in the assignment or any subsequent document, but shall assume that the assignment effectually vested the property in the assignee with a good title for the residue of the term.

Title to mesne assignments not to be required.

2. The vendor will furnish an abstract consisting of the lease, dated the —— day of ——, under which the property is held, and an assignment thereof to the vendor, dated the —— day of ——. No further abstract will be furnished, and no objection or requisition or inquiry shall be made in respect of the intermediate title.

Small purchasers not entitled to delivery of abstract.

3. No purchaser whose purchase-money does not exceed 300*l*. shall, except upon the terms hereinafter mentioned, be entitled to delivery of an abstract of title, but an abstract prepared according to these conditions will, during fourteen days after the sale, be deposited at the office of Messrs. —— & Co., No. —, Lincoln's Inn Fields aforesaid, during business hours, and the same may be examined, and extracts may be taken therefrom by the respective purchasers or their solicitors; Provided that any such purchaser as aforesaid, on giving notice in writing to Messrs. —— & Co., requesting that an abstract may be delivered to him, and also on paying to them the cost of such abstract within four days after the sale, shall be entitled to have delivered to him an abstract prepared in accordance with these conditions. In case no abstract is required he shall be bound in the same way as if an abstract prepared according to these conditions had been actually delivered to him.

Purchaser entitled to an abstract.

(*b*) Lord St. Leonards says that a purchaser may insist upon an abstract, and is not bound to wade through the deeds: Sugd. Vend. 406.

(*c*) Where there is no condition protecting the vendor from producing deeds he is bound to produce the lease which is the root of his title, but no other document prior to the commencement of title: see *Frend* v. *Buckley*, L. R. 5 Q. B. 213.

IV. Commencement of Title.

IV. COMMENCEMENT OF TITLE.

General form.

1. The title shall commence with an indenture dated the —— day of ——, 19—, being a conveyance by way of sale [*or* a mortgage, *or* the lease, *or* the underlease under which the vendor holds the property (*d*)].

Admission to copyholds or surrender.

2. The title shall commence with an admission of [A. B.], dated the —— day of —— [*or* "with a surrender on sale," *or* "with a surrender to the uses of a will," *or* "with a conditional surrender," dated, &c.].

Admission and enfranchisement (*e*).

3. The property offered for sale was formerly copyhold of the manor of ——. The copyhold title shall commence with an admission of [A. B.], dated the —— day of ——, and the freehold title shall commence with a deed of enfranchisement dated the —— day of ——.

Allotment under an inclosure award.

4. The title to the allotments numbered —— and —— on the sale plan, shall commence with an award under the Act of Parliament for the inclosure of ——; the validity and regularity of the award shall be assumed, and the title to the hereditaments in respect of which it was made shall not be called for or investigated, nor shall any requisition or objection be made or taken in respect thereof; and it shall be assumed that by the award the fee simple became vested in the allottee named in the award, subject only to the reservations and matters therein mentioned.

Title commencing with a will.

5. The title shall commence with a general devise of real estate contained in the will of a testator who died in the year ——, and the purchaser shall assume the testator's seisin or ownership, and that the property passed under the devise.

Title commencing with an appointment.

6. The title shall commence with an appointment by deed, dated, &c., under a power contained in an indenture, dated, &c., and the prior title shall not be investigated, nor shall any requisition or objection be made with respect thereto.

Short title with liberty to purchaser to call for earlier title at his own expense.

7. In order to save trouble and expense to the vendor, the title shall commence with a recent conveyance on sale, dated the —— day of ——, but the purchaser, by giving a written notice

(*d*) As to the necessity for accurate description of the deed forming the commencement of the title, see *ante*, p. 206, note (*i*).

(*e*) The purchaser is not entitled to require production of the title to make the enfranchisement: see Conveyancing Act, 1881, s. 3, subs. (2).

IV. COMMENCEMENT OF TITLE.

to the vendor, or his solicitor, within —— days after the delivery of the abstract of such title, may require the earlier title, commencing with, &c., to be abstracted and deduced at the purchaser's expense (*ee*).

Inspection of title before sale.

8. The title shall commence, &c. An abstract of the earlier title deeds in the vendor's possession may be seen at the office of his solicitor at any time prior to the sale, but after the sale no investigation of such earlier title shall be permitted, nor shall any objection or requisition be made in respect thereof.

Short title on ground of recent investigation.

9. The title to the property was fully investigated when it was purchased in the year —— by the late owner [*or*, by the vendor]. In order, therefore, to save the trouble and expense of another investigation of the title prior to that date, it is stipulated that the title shall commence with the conveyance dated the —— day of —— to the late owner [vendor], but the earlier title, commencing with, &c., will be abstracted and deduced, if required, at the purchaser's expense, upon his giving a notice in writing requiring the same within —— days after delivery of the abstract of the later title (*ee*).

Such title as the vendors have (*f*).

10. As to certain small portions of the property, containing —— acres or thereabouts [*or*, as to lot —], the purchaser shall be content with such title as the vendors have.

Leaseholds: production of original lease and title to receive rent not to be required.

11. The title shall commence with an indenture of assignment dated the —— day of ——, and the purchaser shall not be entitled to require the production of the original lease; and no evidence shall be required that the persons now in receipt of the rents payable thereunder are entitled to receive it.

Moiety purchased by owner of other moiety.

12. The title shall commence with an indenture dated the —— day of ——, purporting to be a conveyance of an undivided moiety of certain hereditaments, of which the land now offered for sale formed part, to [A. B.], who is therein stated to have been, and he shall accordingly be taken to have been, seised of the remaining moiety thereof in his own right, and the vendor shall not be required to furnish any previous or other title to such remaining moiety.

(*ee*) If this condition is used insert any special conditions that may be required as to the earlier title.

(*f*) This condition is only applicable to the sale of a lot or property of small value, and ought not to be used except in case of absolute necessity, as it is calculated to prejudice the sale.

IV. COMMENCEMENT OF TITLE.

Settlement.

13. The title shall commence with an indenture of settlement dated the —— day of ——, purporting to be a settlement of the property offered for sale (with other property). The purchaser shall not require any evidence, information, or explanation of the right of the settlor to make such a settlement, except a declaration by Mr. ——, who has for many years past acted as solicitor to the family of the vendor, that the property has, ever since the date of the settlement, been possessed and enjoyed consistently with the uses and trusts thereof.

Short title: no earlier title to be shown.

14. The property forms a portion of the —— estate, which was for many years the seat of the late Sir [A. B.]. The title to the estate is well known in the neighbourhood (*g*), and was carefully examined when the vendor's predecessors acquired the property, and accordingly it is now stipulated that the title shall commence with an indenture, dated the —— day of ——, 19—, and made between [F. B.], Esquire (grandson of Sir [A. B.]), of the one part, and [C. D.], and [E. F.], of the other part. No earlier title shall be required.

Surplus lands of railway company (*h*).

15. Inasmuch as the property offered for sale forms part of lands conveyed to the —— Railway Company by an indenture, dated the —— day of ——, 19—, the title shall commence with that conveyance, and the purchaser shall not be entitled to call for or require evidence of any of the recitals or statements contained in the said conveyance, but shall admit that everything (if anything was necessary) was done and performed by the company to enable them to sell and effectually convey the said property now offered for sale as surplus lands, and shall not call for or require production of any evidence to this effect, or of the identity of the land with that described in the conveyance.

Voluntary conveyance.

16. The title shall commence with a voluntary conveyance, or deed of gift of the property, dated the —— day of ——; the purchaser shall accept such title as passed to the grantee thereunder, and shall not require any evidence that the grantor was

(*g*) This statement should not be made unless it is capable of being substantiated.

(*h*) This condition will debar the purchaser from disputing the vendor's title, even though it should appear that the company had not made an offer of the lands to adjoining owners, as required by sect. 128 of the Lands Clauses Consolidation Act, 1845, and that such adjoining owners had not waived their right of pre-emption: *Best* v. *Hamand*, 12 Ch. D. 1.

IV. COMMENCEMENT OF TITLE.

solvent at the date thereof, but shall assume that the said conveyance was valid, and effectual in all respects (*i*).

Waste of manor.

17. The title to the piece of land, No. —, in lot —, shall commence with a grant to the late [A. B.], of —— acres of land from the lord of the manor of ——, to hold according to the custom, by copy of court roll; and no objection shall be made by reason of any variation in the quantity, or on the ground that the land granted was not expressed to be parcel of the waste; nor shall any evidence be required that the land was parcel of the waste, or that the lord was authorised by the custom to grant such land by copy (*k*).

V. Title—Evidence of Title, &c.

Action.

1. The purchaser shall not require any evidence of any matter or thing admitted or proved, or found in any action in the High Court of Justice, and shall assume that all proper persons were parties to such action, and that all decrees, orders, and proceedings therein were made and had in the presence of all proper persons, and are valid and binding in all respects.

Allotments.

2. All allotments made more than —— years before the day of sale under any Enclosure Act or award shall, unless the contrary appears, be deemed duly made in respect of the title under which the lands taken on allotment appear by the abstract or otherwise to have been since held, and no requisition or objection is to be made in respect of any such allotment or in respect of the title to the land in respect whereof the allotment was made.

Annuity bond not to be produced.

3. The said [W. B.] sold and assigned to the said [J. B.] all the share of the said [W. B.] in the premises, in consideration of an annuity secured by a bond. The purchaser of lot 1 shall not call for the production of any abstract of or evidence as to the said bond, and shall assume that the said [W. B.] was the same

(*i*) See also conditions as to voluntary conveyances, *post*, p. 242.

(*k*) The state of the title under such grants occasionally requires such a condition; and it is to be remembered, that a defective title to a small part of the estate may entitle the purchaser to rescind the contract as to the whole, if he can show that the part of which the title is defective is material to the enjoyment of the rest; as where it is a paddock or stables, a private road, &c.

person as [W. B.], the annuitant, whose death is recited in an abstracted deed.

Building society; due appointment of trustees.

4. In the year —— a mortgage was made to three persons who purported to be the trustees of a building society, and a receipt for the money secured appears to be endorsed on the mortgage deed and signed by them as such trustees; it shall be assumed that the persons so signing were then the duly appointed trustees of the society, and accordingly that the receipt operated as a complete release and re-assignment of the mortgaged property, and no requisition, inquiry, or objection shall be made or taken as to the appointment of the trustees or the constitution of the society.

4a. The purchaser shall assume that every building society mentioned in the abstract was and is duly constituted, and no evidence shall be required of the rules, constitution, or incorporation of such society, or of the appointment of any trustees, directors, or officers thereof, and the purchaser shall assume that the receipt given on the redemption of any mortgage to any such society or the trustees thereof was duly sealed, and signed or countersigned, and is valid in all respects.

Constitution and powers of industrial company.

5. No requisition or objection shall be made or taken as to the constitution or powers of the —— Land Company, Limited, but each purchaser shall assume that the said company had power to acquire and dispose of the property conveyed by them.

Constitution and rules of friendly society.

6. The ordinary prints of the rules and orders of the said —— Society contained in their annual reports shall be accepted as conclusive evidence of such rules and orders, and a copy certified by a person describing himself as the secretary of the society to be a true copy of any resolution stated to have been passed at any meeting either of the society or of its standing committees, shall be accepted as conclusive evidence of the passing and contents of such resolution, and of its validity, and no purchaser shall be entitled to production of any of the rules, orders, minutes, or books or records of the society, or to any covenant, acknowledgment, or undertaking in relation thereto.

Crown grant.

7. The purchaser of lot ——, which is held under an old grant from the Crown, shall not require any copy or abstract of such grant, nor any evidence of such grant, except the recital thereof in the modern documents; nor shall he require any deduction of the intermediate title, except for the last —— years; nor any

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evidence of the identity of the lands included in such lot with the lands included in the said grant.

Death of annuitant.

8. No purchaser shall require any evidence of the death of [*annuitant*], an annuitant under the will of [*testator*], who, in a memorandum indorsed on a deed dated in 19—, is stated to have died in France.

Deed missing to be evidenced by attested copy.

9. It is apprehended that an indenture dated the —— day of ——, ——, being a settlement of the property offered for sale (with other property), was accidentally destroyed by fire in the year ——; the purchaser shall be satisfied with the production of an attested copy of the said indenture as sufficient evidence of the contents and due execution of the original.

Deed missing to be evidenced by recitals in subsequent deed.

10. As to lot 1, a conveyance thereof, believed to have been made in the year ——, is not in the vendor's possession, and it is not known in whose custody the same now is, or whether it is in existence. No abstract or copy of such conveyance shall be called for, but a recital thereof contained in a subsequent conveyance of the property by way of mortgage, dated the —— day of ——, 19— (which mortgage has since been paid off, and the property reconveyed), shall be taken to be conclusive evidence of the material contents and due execution of the missing deed, and no objection or requisition shall be made in respect of the non-production or non-existence thereof.

Deeds not in vendor's possession not to be required.

11. The vendor shall not be required to produce any deed or document not in his possession, or to procure any copy or abstract thereof, or any covenant, acknowledgment, or undertaking in respect thereof, or to give any information or explanation as to the custody thereof, or otherwise in relation thereto; and if the vendor shall produce any copy or abstract of any deed or document not in his possession, such copy or abstract shall be accepted without verification as sufficient evidence of the contents and due execution of such deed or document.

Exchange.

12. The vendor shall not be required to produce, for any purpose, any evidence or documents of title to the lands which have been taken in exchange [upwards of —— years ago], anterior to the deeds by which such exchanges have been effected, nor to deduce the title to the lands given in exchange.

Land tax, redemption of.

13. No evidence shall be required of the redemption of the land tax, except a certificate or declaration of the collector of land tax or of the vendor's steward or agent, to be made, if required, at the

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purchaser's expense, that [with the exceptions noted in the particulars] the property is not now assessed for land tax, and that no land tax has been paid in respect thereof for the last ten years.

Land tax, redemption of.

14. No evidence shall be required of the freedom from land tax of any part of the property, except a certificate of redemption, dated in 1799, and a statutory declaration made in the year 18— by a former owner of the property, that he had not paid or been called upon to pay land tax; but the vendors shall not be required to identify the property described in the particulars with that described in the certificate.

Leaseholds; observance of covenants where rent nominal.

15. The property being held under a lease at a nominal rent, the mere fact of possession shall be taken as sufficient evidence of the performance and observance of all the lessee's covenants.

Leaseholds; observance of covenants, and title to receive rent.

16. As respects lot 5, the production of the receipt for the rent which last accrued due under the lease of the —— day of ——, or satisfactory evidence of the payment of such rent, shall be accepted as conclusive evidence, and as respects the remainder of the property, the lease whereof is at a peppercorn rent, it shall be assumed, without evidence, that all the covenants and conditions of such leases have been fulfilled, or that all breaches (if any) of such covenants and conditions, or any of them (whether appearing by the abstract or otherwise or not), have been effectually waived down to the time of completion of the purchase, and that the said leases are then valid and subsisting; and as respects the rent reserved on the lease of lot 5, no evidence shall be required of the fact that the parties giving such receipts or receiving such rent were entitled so to do.

Leaseholds renewable.

17. The vendor shall furnish an abstract of the lease, dated the —— day of ——, under which the vendor holds. The lease was granted upon the occasion of the surrender of a former lease; but, inasmuch as the landlord on the occasion of each renewal requires the surrendered lease to be given up to him, the purchaser shall not, except as hereinafter mentioned, call for the production of, or investigate, or make any objection or requisition in respect of the surrendered lease; and the production of a receipt for the last payment of rent, accrued previously to the completion of the purchase, shall be conclusive evidence that all the covenants and conditions in the lease have been performed and observed up to the completion of the purchase. A copy or abstract of the existing lease will be produced at the sale, and the purchaser shall be deemed to have notice of all the contents of the lease.

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Leases to be presumed to have determined.

18. Certain leases and agreements mentioned in deeds dated in and prior to the year 18— shall be presumed to have determined, and no requisition, objection, or inquiry shall be made in respect thereof.

Leaseholds for lives.

19. The statement in the particulars of the ages of the several persons for whose lives the property is now held on lease, is taken from a statement of such ages contained in the subsisting lease of the property, and the purchasers shall not require any evidence of the ages of such persons, other than the statement in the said lease.

Legacies; declaration as to payment.

20. A statutory declaration, which was made on the occasion of a conveyance by way of mortgage of the property in 18—, that all legacies given by the will of [A. B.] had been paid, shall be accepted as conclusive evidence of that fact.

Legacies and annuities, no evidence as to payment.

21. The purchaser shall not require any evidence that the legacies and annuities given by the will of [A. B.], who died in the year ——, have been paid or have ceased.

Legacies and arrears of annuity presumed to be paid.

22. No evidence shall be required of the payment or other discharge of any legacy or sum of money charged by any will which became payable more than —— years since, nor of the payment of arrears of life annuities which have ceased or expired more than —— years ago (*l*).

Legal estate outstanding.

23. The tracing and getting in of any outstanding legal estate or interest which any purchaser shall require to be traced and got in, and all searches, inquiries, and journeys for such purposes or any of them, shall be at the expense of the purchaser requiring the same.

Mortgage, satisfaction of.

24. As to lot —, the purchaser shall not require any other evidence of the satisfaction of a mortgage, dated in 18—, than the production of the mortgage deed from the vendor's possession, and the vendor's statutory declaration that no payment or demand of payment of interest or principal has been made during the last

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(*l*) It is not sufficient to show that an annuity has ceased; it must also be shown that no arrears remain unpaid: see *Wynn* v. *Williams*, 5 Ves. 130. An annuity charged on land is within the 42nd section of the Statute of Limitations (3 & 4 Will. 4, c. 27), and consequently arrears are generally recoverable for six years only; but even if the annuity has ceased for that period it may be advisable to insert this provision to meet the possible chance of a subsequent acknowledgment in writing in respect of the arrears.

—— years; and the purchaser shall assume without question that the legal estate has been duly reconveyed, and is now vested in the vendor. V. TITLE—EVIDENCE OF TITLE, &c.

25. The vendor shall not be required to produce any evidence of title to lot —, other than an indenture of mortgage, dated the —— day of ——, 18—, and a statutory declaration by the vendor, that he has been in possession for a period of twelve years and upwards, without having received interest, or given to any person any acknowledgment of the title of the mortgagor or of his right or equity of redemption. Mortgagee's title under Statute of Limitations.

26. The purchaser shall assume that all notices required by the Settled Land Acts have been duly given or waived, and shall not make any requisition, objection, or inquiry in respect to any such notice (*m*). Notices under Settled Land Acts.

27. An abstract, dated in the year 18—, shall be accepted as sufficient evidence of the contents and due execution and attestation of two deeds therein abstracted, and stated to bear date, &c. respectively, such deeds being recited or referred to in a purchase deed, dated, &c., which will be produced. Old abstract to be evidence.

28. The purchaser shall not require any evidence of the birth or death of any person, or of any fact or matter relating to the pedigree of the vendor, other than the statutory declaration of ——, who is related to the family. Pedigree.

29. Upon the request of any purchaser the vendors will apply for a certificate of discharge of the estate duty payable on the death of a late owner, who died in the year 19—, and will produce such certificate, when obtained, to such purchaser; but in case such certificate shall not be obtained before the date fixed for completion, the purchase shall not be delayed, nor shall any objection be raised on that ground; and any purchaser who shall not make such request as aforesaid before that date shall be taken to have waived the production of such certificate. If any further estate duty shall become payable the vendors will duly pay the same. The production of a certificate of discharge including any lot shall Payment of estate duty (*mm*).

(*m*) A person dealing in good faith with the tenant for life is not concerned to inquire as to the giving of notices under sect. 45 of the S. L. A. 1882, but a purchaser may require evidence of the existence of trustees to whom notice could be given.

(*mm*) See sect. 11 of the Finance Act, 1894.

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be accepted by the purchaser of such lot without requiring a separate certificate relating to such lot.

Estate duty on timber, &c. and succession duty (*n*).

30. The purchaser shall not require the estate duty or succession duty (if any) payable upon the occasion of the present sale in respect of the timber, trees, and wood growing upon the property now offered for sale [and other property] at the time of the death of the late owner, Mr. ——, to be discharged prior to completion, but shall be satisfied with the covenant of the vendor to indemnify the purchaser and the purchased property against the same.

Presumption of death (*o*).

31. It shall be assumed upon the evidence afforded by a statutory declaration, to be made by a disinterested person, that [A. B.], who left England in or about the year ——, and has not since been heard of, is dead.

Payment of death duties (*p*).

32. It shall be assumed, without requisition or inquiry, that all duties payable on the death of any person dying more than —— years before the date of the sale have been paid.

Policy of insurance on life of assured.

33. The age of the assured was admitted on the policy, and such admission shall be deemed to be sufficient evidence that he was, at the date of the policy, of the age therein mentioned. No further evidence of the validity of the policy and of the accuracy of the statements upon which it was granted shall be required than the production of the receipt for the premium last due.

Policy on the life of a third person (*q*).

34. No further evidence of the validity of the policy comprised in lot — shall be required than the statutory declaration of Mr. ——, on whose life the policy was effected, that when the policy was effected he was in a good state of health and of the age mentioned in the policy, and the production of the receipt for the last premium, and the statutory declaration of Mr. ——, that when the policy was effected he had an insurable interest in the life mentioned in the policy to the amount of ——.

(*n*) See Finance (1909-10) Act, 1910, s. 61 (5); Finance Act, 1911, s. 19; and Finance Act, 1912, s. 9.

(*o*) As to presumption of death, see *Re Phené*, L. R. 5 Ch. 139; *Re Benjamin*, [1902] 1 Ch. 723; *Re Aldersey*, [1905] 2 Ch. 181; and *Re Jackson*, [1907] 2 Ch. 354.

(*p*) See, as to succession duty, the Customs, &c. Act, 1889, ss. 12—15; Finance (1909-10) Act, 1910, s. 58; and as to estate duty, Finance Act, 1894, s. 8 (2); Finance Act, 1896, ss. 17, 18; Finance Act, 1900, ss. 11—14; Finance Act, 1907, s. 12; and Finance (1909-10) Act, 1910, ss. 54 *et seq.*; and see Finance Act, 1914, ss. 12—15.

(*q*) See, as to insurance by one person on the life of another, stat. 14 Geo. 3, c. 48, s. 1; *ante*, p. 218.

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35. As to lot 2, the purchaser shall not require any evidence, information or explanation of the title of the vendor other than a statutory declaration, to be made by an old inhabitant of the parish of ——, to the effect that the last-mentioned lot has been for at least —— years in the undisturbed possession of [*testator*], and of the persons claiming under his will, and also a counterpart of a lease of the same lot granted by the said [*testator*] in the year 18—. Possessory title.

36. As to lots — and —, the title shall commence with evidence of the possession in the year ——, of the party under whom the vendor claims, and the purchaser shall not investigate or object to the earlier title. Possessory title.

37. The property is vested in the vendor as mortgagee by deposit of title deeds, accompanied by a memorandum under seal. The purchaser shall not require the vendor to get in or trace the devolution of the outstanding legal estate, nor shall he make any requisition or objection with respect thereto. Sale by equitable mortgagor.

38. The vendor is selling as mortgagee under a mortgage by way of sub-demise for the whole of the term granted by an indenture of lease, less —— days, such mortgage containing a declaration of trust of the leasehold reversion. The purchaser shall not require such reversion to be got in or conveyed, or the devolution thereof to be traced, nor shall he make any requisition or objection with respect thereto; and the mere fact of possession by the mortgagor or his tenants shall be taken as sufficient evidence of the performance and observance of all the lessee's covenants and conditions in the said lease up to completion of the purchase. Sale by mortgagee by sub-demise (*r*).

39. The vendor shall not [save at the purchaser's expense] be required to furnish any evidence or information as to the creation of or to trace the title to any term which has been assigned to attend the inheritance. Satisfied terms (*s*).

40. The vendors shall not be required to produce or to furnish Proceedings in action.

(*r*) See Preliminary Note, *ante*, p. 191. Where a mortgage by sub-demise has been executed before the registration of the leasehold title under the L. T. Acts, and the mortgagee sells subsequently to such registration under his power of sale, he is not the vendor of "registered land" within sect. 16, sub-sect. (2) of the L. T. Act, 1897, and cannot be required to register his charge before completion or procure a transfer from the registered proprietor: see *Voss and Saunders' Contr.*, [1911] 1 Ch. 42. In such a case this condition may be used. Mortgage by sub-demise prior to registration under L. T. Acts.

(*s*) See Satisfied Terms Act, 1845.

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any abstract, copy, or evidence of the proceedings in the above-mentioned action, except an abstract of the order under which the sale is made; nor shall they be bound to enrol the said order or any of the proceedings. Nor shall the purchaser make any inquiry or objection as to the parties to the suit, or the regularity of the proceedings.

Possibility of issue.

41. The purchaser shall not object to the title of part of lot —, on account of the possibility of a lady, aged fifty-two years and unmarried, marrying and having issue (*t*).

Power of attorney.

42. Any surrender of or admittance to the property made pursuant to power of attorney shall be assumed to have been duly authorised by the power under which it appears on the court rolls to have been made, and production of the power shall not be required.

Power of attorney.

43. Where any deeds shall purport to have been executed by attorney, the vendors shall not be required to show that the principal was alive at the time of execution (*u*).

Rent, premises sold free and indemnified from.

44. The owner of the premises No. —, —— Street, comprised in the said lease as aforesaid, having by a deed, dated the —— day of ——, 18—, covenanted with the vendor to pay the rents reserved by the said lease and thenceforth to become payable, and to observe and perform the covenants and conditions of the said lease, and to keep the vendor, his heirs, executors, administrators and assigns indemnified against all claims and demands by reason of the non-payment of such rents, and also against the non-observance or non-performance of any of the covenants, conditions and agreements contained in the said lease so far as such covenants, conditions and agreements relate to the premises No. —, —— Street aforesaid, the premises now sold are to that extent, but not further or otherwise, sold freed and discharged from the rents payable under the said lease. And the purchaser shall, at his own expense, enter into a covenant with the vendor that, so far as regards the premises the subject of this sale, he the purchaser will

Purchaser to indemnify vendor as to covenants in lease.

Possibility of issue.

(*t*) In a case of this kind it is well to provide against the risk of dispute by a special stipulation. As to where the Court will presume a woman to be past child-bearing, see *In re White*, [1901] 1 Ch. 570, and the cases there cited.

(*u*) In cases where an instrument executed by attorney has been so executed pursuant to a power created otherwise than under sects. 8 and 9 of the Conveyancing Act, 1882, it is incumbent on a purchaser to ascertain that the principal was alive at the time of the execution of the instrument. See, as to the effect of these sections, Wolst. Conv. & S. L. Acts, 10th ed. pp. 166—168.

observe and perform the covenants and provisions of the lease and indemnify the vendor, his executors, administrators and assigns in case of any non-performance or non-observance thereof. The premises being sold discharged from the said rents in manner aforesaid the mere fact of possession under the said lease at the time of completion of the purchase shall be accepted as sufficient evidence of the due performance of the lessee's covenants up to that time, and the purchaser shall not be entitled to make any requisition as to the performance of the said covenants, or any of them.

Possession to be evidence of performance of covenants by vendor.

45. A statutory declaration that the owners of the estate, in common with the other freeholders of the manor of ——, have always claimed and exercised the right of shooting over the —— Moor, shall be accepted as sufficient evidence of the right.

Sporting rights.

46. Lot —— contains some small slips of land lying between the ancient boundaries of the —— estate and the high road which have been inclosed several years. The purchaser shall be satisfied with the possession of such slips of land, and shall not require any title thereto.

Slips by roadside.

47. On the purchase of lot 4 by the mortgagor from [A. B.], and his mother [F. B.], [A. B.] covenanted to pay all succession duty which might have become payable on the death of the said [F. B.] in respect of the succession of the said [A. B.]. The vendor's solicitor satisfied himself, on the mortgage being taken, that such succession duty had been duly paid, and the purchaser shall be satisfied with such covenant, and shall not make any requisition or objection with respect to the said succession duty.

Succession duty.

48. No objection shall be made on the ground of the non-production of the original of any deed or document of which an attested or office copy is produced, or on the ground of any deed or document of title, dated prior to the 17th May, 1888 (*w*), being unstamped or insufficiently stamped, or on account of any deed or document not being registered in the Middlesex Registry, and if such stamping or registration cannot be rectified or effected, the sale shall not be annulled, nor any objection to the title made on that account.

Stamps and registration.

49. If the [any] purchaser shall require any unstamped or insufficiently stamped deed or document, dated prior to the 17th

Stamps.

(*w*) See *ante*, p. 198, note (*o*).

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May, 1888, to be stamped, the same shall be stamped at his expense (*w*), or at the expense of the purchaser requiring the same; but the completion of the purchase is not to be delayed on that account.

Tithes, exemption from.

50. The vendor shall not be required to furnish any evidence of the exemption of the property from tithes, beyond a statutory declaration by the occupier that no tithe or rentcharge or other payment in lieu of tithes has been paid or demanded in respect thereof for the last —— years.

Tithes, exemption from.

51. By an award of the Inclosure Commissioners for the parish of C——, dated the —— day of ——, certain allotments of land were made to the patron and rector in lieu of rectorial tithes. No purchaser shall require any evidence, beyond that afforded by the inspection of these several awards, that the lands in the several parishes of A—— and C—— are tithe free.

Underlease, covenants in.

52. No objection shall be made on account of the covenants by the lessee in any underlease not corresponding with the covenants by the lessee in the lease or underlease under which the property is held, or in the superior lease.

Title under voluntary conveyance (*x*).

53. The present vendor acquired the property by deed of gift in 18—. No objection or requisition shall be made on this ground, but the purchaser shall be satisfied with a statutory declaration to be made, if required, at the purchaser's expense by a member of the donor's family, that at the time of the gift the donor was, and that since that time he has continued to be, amply solvent, and has not dealt with the property.

Title under voluntary conveyance less than three years old (*y*).

54. The property passed to the present vendor under a voluntary conveyance dated the —— day of ——, 19—, from his father, now —— years of age. The purchaser shall assume that the donor was amply solvent at the date of the conveyance, and has since continued to be amply solvent, and shall be satisfied with the vendor's covenant to indemnify him and the purchased property against any duty which may become payable on the

(*x*) Where the title depends on a voluntary conveyance a condition such as that in the text should be inserted: see *Marsh* v. *Earl Granville*, 24 Ch. D. 11; *Noyes* v. *Paterson*, [1894] 3 Ch. 267. As to voluntary conveyances since 28th June, 1893, see the Voluntary Conveyances Act, 1893. It is not safe to take a conveyance from a donee within three months of the voluntary conveyance: see Bankruptcy Act, 1914, s. 37.

(*y*) See Finance (1909-10) Act, 1910, s. 59; and see also sect. 1 (b) of that Act.

death of the donor within three years from the —— day of ——, 19—.

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55. In addition to all expenses by law made payable by a purchaser, the [each] purchaser shall bear all expenses of and incidental to making, procuring, verifying, furnishing, producing, and examining all attested, stamped, office, or other copies and abstracts of and extracts from Acts of Parliament, inclosure awards, records, proceedings of Courts, court rolls, deeds, wills, probate, letters of administration, and other documents, whether in the vendor's possession or not, which the [any] purchaser may require, for whatever purpose the same may be required respectively, and of and incidental to all inquiries, searches, and journeys incident to any of the purposes aforesaid.

Expenses of making copies of deeds, &c., whether in vendor's possession or not, to be borne by purchaser (*z*).

56. No objection or requisition shall be made on the ground of any defect or insufficiency in or the absence of any covenant or acknowledgment for the production and delivery of copies of or undertaking for the safe custody of any muniments of title.

Insufficiency or absence of covenant for production, &c. of deeds.

VI. Identity of Parcels.

1. The purchaser shall be satisfied with such evidence of the identity of the property as is afforded by the abstracted deeds, and shall not require any further or other evidence thereof beyond a statutory declaration (to be obtained at his own expense) that the property sold has been held and enjoyed in conformity with the title shown by the abstract for upwards of —— years before the day of sale.

Statutory declaration.

2. Should any question arise as to the identity of the premises described in the particulars with the premises described in the documents abstracted, the purchaser shall be furnished at his own expense with a statutory declaration that the premises have been held in conformity with the title as deduced for —— years last past, except in cases where the title is by these conditions limited to commence at a shorter date than —— years, and in such cases, for the period for which the title is shown, and thereupon the requisition in respect of identity shall be considered as satisfied.

Statutory declaration.

(*z*) This condition extends the provisions of the Conveyancing Act, 1881, s. 3 (6), throwing certain expenses on the purchaser.

As to identity of premises.

As to measurements.

3. No requisition or objection shall be made or taken on the ground of any discrepancy between the former and present descriptions or measurements of any lot.

As to different tenures and incumbrances.

4. The vendor shall not be required to distinguish the freehold from the copyhold parts of any lot, nor to distinguish copyholds of different manors, or to distinguish the portion of the property in respect of which the yearly rentcharge of £——, or any other rent, or any annual payment mentioned in the particulars is payable, or to reconcile or identify or connect any of the descriptions in the several deeds or documents abstracted with each other, or any of such descriptions with the description in the particulars, and no further evidence of identity shall be required.

As to different tenures.

5. The vendor shall not be required to distinguish the parts of any lot held under different titles, nor to distinguish the copyhold part of lot 1, nor to distinguish the leasehold part of any lot, further than the same can (if at all) be distinguished by the descriptions in the abstract.

Boundaries of manors.

6. The vendor shall not be required to show the boundaries or limits of the respective manors included in the sale, or to specify the particulars of the boundaries or rights (if any) belonging thereto, or to distinguish the tenements or properties comprised therein upon or out of which any quit or other rents or payments are, or may be, charged or issuing, or to furnish any other information in relation to such manors, or either of them, further or otherwise than the same respectively may be shown by the manorial books and documents in the vendor's possession, and no objection shall be taken on account of any such books or documents being defective or wanting. The statements of facts contained in the particulars are believed, and in the absence of evidence to the contrary shall be presumed to be correct, but the vendor shall not be required to verify the same.

Discrepancy between old and present measurements.

7. The property is believed and shall be taken to be correctly described as to quantity and otherwise, the descriptions and quantities in the particulars having been taken from an actual survey; and the vendor shall not be required to reconcile them with other surveys or descriptions, or to account for the fact that the entire quantity in the particulars exceeds the quantities set forth in the muniments of title.

Change of number in street.

8. The premises were formerly known as No. ——, in C—— Road aforesaid, and the purchaser shall not make any objection

or requisition on this account, or require any evidence of the change of numbers. VI. IDENTITY OF PARCELS.

VII. Fixtures—Timber (*a*)—Crops, &c.

1. All timber and timber-like trees, pollards, tellers and saplings, down to the value of one shilling per stick inclusive, and also the fixtures, shall be paid for at a valuation to be made within twenty-one days after the sale by the auctioneer [*or*, by two referees or their umpire, to be chosen in the usual manner], who shall determine what articles are within this condition. The amount of such valuation shall be considered as part of the purchase-money. Timber, fixtures, &c.

2. The timber and timber-like trees, tellers, pollards and saplings have been valued by Mr. ——, the auctioneer, at the following sums, that is to say, as to lot 1, £——; lot 2, £——, &c. Each purchaser shall, on completing his purchase, pay in addition to the balance of his purchase-money, the amount of such valuation in respect of the lot or lots purchased by him. Timber at a valuation already made.

3. The timber and timber-like trees, tellers, pollards, and saplings, down to the value of one shilling per stick inclusive, and the underwoods and plantations down to the stem, and the tenant's fixtures in and about the dwelling-house, and all iron hurdles and iron fencing, and also all agricultural machinery and implements, and the growing crops, live and dead stock [hay and straw, dung and compost on lands in hand, acts of husbandry, tillages and workmanship of fallows], and all tenant's rights and property usually taken by an incoming from an outgoing tenant, shall be paid for by the purchaser at the time fixed for the completion of the purchase at a valuation to be made, prior to completion, at the joint expense Timber, fixtures, crops, &c. when farm sold as a going concern.

(*a*) Trustees ought not to sell timber separately from the land unless expressly authorised so to do by the instrument creating the trust: *Cholmely* v. *Paxton*, 3 Bing. 207. As to the sale of timber on settled estates apart from the land, see Settled Land Act, 1882, s. 35; *Re Llewellin*, 37 Ch. D. 317; *Cockerell* v. *Chomeley*, 3 Russ. 565. As to what is "timber," see *Honywood* v. *Honywood*, 18 Eq. 306, 308. As to the estate and succession duties payable on the timber, trees and wood growing on the property of a person dying on or after the 30th of April, 1909, see Finance (1909-10) Act, 1910, s. 61 (5), and Finance Act, 1912, s. 9; and see Hanson, 6th ed. 731. Timber, sale by trustees. Estate and succession duties.

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of the vendor and purchaser, on the basis of the Agricultural Holdings Act, 1908, by two referees, one to be nominated by the vendor and the other by the purchaser, or by an umpire to be appointed by such referees before proceeding to a valuation; but if either the vendor or purchaser shall refuse or neglect to nominate a valuer, and to notify such nomination in writing to the other of them before the —— day of —— next; or if the valuer nominated by either party shall refuse or neglect to act, then the decision and valuation shall be made by the referee (if duly notified as aforesaid) of the other party alone; and the referees or referee, or umpire, shall have power to determine what are "tenant's fixtures" and "tenant's property" within this condition. After such valuation has been made, the property valued shall be at the risk of the purchaser, who shall (on payment of the balance of his purchase-money and the amount of the said valuation) be entitled to enter into occupation [but the vendor shall be entitled to use the barns, granary, and yards for the purpose of housing and thrashing the present year's crops until the —— day of ——].

Tenant's fixtures in a town house.

4. The inside and outside blinds, gas and electric fittings, pipes and wires, picture rods, iron safe in pantry, &c., as specified in an inventory, to be produced at the sale, shall be taken and paid for by the purchaser at a price to be named by the auctioneer at the time of sale [*or*, at a valuation to be made, at the joint expense of the vendor and purchaser, by two referees or their umpire, to be chosen in the usual way].

Fixtures, furniture, stock-in-trade, &c., on sale of a shop or factory as a going concern.

5. All the tenant's fixtures, fittings, furniture [machinery], implements, and utensils in and upon the premises offered for sale, and used or employed in the vendor's trade or business of a ——, and all the stock-in-trade and book or other debts belonging and owing to the vendor, and the benefit of all contracts and engagements relating to the said trade or business entered into between the vendor and other persons, shall be taken by the purchaser at a valuation to be made by the auctioneer [*or*, at the joint expense of the vendors and purchaser, by two valuers, or their umpire, to be chosen in the usual manner], and the decision of the auctioneer [*or*, of the said valuers or their umpire] as to what are tenant's fixtures or fittings shall be conclusive.

Fixtures in inventory to

6. The purchaser shall pay for all the fixtures and things included in an inventory already made out and signed by the

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auctioneer, which may be seen at his office, according to a valuation to be made (at the joint expense of the vendors and purchaser) by two referees or their umpire in the usual way, the amount whereof shall be considered as part of the purchase-money.

be taken at a valuation (*b*).

Purchaser to declare his option to take the grass and crops.

7. The purchaser of each lot shall declare, by notice in writing to be delivered to the vendors' solicitors on or before the —— day of June next, his option to take or refuse the grass and other growing crops at a valuation to be made by a referee or by two referees or their umpire to be chosen in the usual manner, at such time between the —— of June and —— of —— following as the vendors shall appoint; and in default of the purchasers so declaring such option, the vendors shall be at liberty, at any time before the crops respectively shall be fit to get in, either to require the purchaser to purchase the same at a valuation, or to sell the same by auction or otherwise on the premises, for their own benefit, with the right of stacking in the stack-yard until the —— day of ——.

Crops not removed by vendor to be taken by purchaser at a valuation.

8. The vendors shall be at liberty to gather and remove all crops which shall be on the land before the —— day of ——; and the respective purchasers shall take all crops which shall be on the land on that day at a valuation to be made by two referees or their umpire, to be appointed in manner mentioned in the —th condition.

Reservation of right to remove or sell fixtures, &c.

9. The vendors reserve to themselves the right to remove at any time before completion (doing no unnecessary damage), the summer-houses, garden seats, and other effects not included in the sale, or to sell the same on the premises by auction.

Reservation of right to hold auctions, thrash corn, &c. until a fixed date.

10. The vendors reserve the right of selling by auction upon the farms and lands in hand, the live and dead farming stock, &c., at any time within sixty days after the sale; also the right of using the barns and yards with stabling, &c., for —— horses [and stalls for —— head of cattle], for stacking and thrashing out the corn and crops, and carrying off or feeding the hay, fodder, &c., till the Lady-day following.

Compensation for damage by game.

11. Any compensation for damage by game, payable under sect. 10 of the Agricultural Holdings Act, 1908, shall be paid by

(*b*) It is very desirable to ascertain the articles in the way specified in the text, if it can conveniently be done, as the meaning and application of such expressions as "fixtures," "tenant's fixtures" are subjects of frequent dispute.

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the vendor, if notice in writing by the tenant under that section shall be given prior to the day fixed for completion; but if such notice shall be given on or after that day then such compensation shall be paid by the purchaser, who shall indemnify the vendor against the same.

Public-house valuations.

12. The furniture, tenant's fixtures and fittings on the premises shall be taken and paid for by the purchaser at a valuation to be made by two appraisers or their umpire in the usual way, and the decision of such appraisers or their umpire as to what are tenant's fixtures and fittings shall be conclusive. Such of the stock-in-trade as shall not have been sold or disposed of prior to the day fixed for completion shall be taken and paid for by the purchaser at a valuation to be made by two gaugers or their umpire in the usual way, and the amount of such valuations shall be paid for at completion by the purchaser, who shall also at the same time pay the due proportion for the time unexpired of the fees and premiums for the licences, compensation duty (*bb*) [and fire insurances] in respect of the premises, and of all outgoings.

VIII. Insurance—Repairs—Expenses incurred by Vendor before Completion.

Purchaser fixed with notice of state of property.

1. The purchaser shall be deemed to buy with full notice of the state and circumstances of the property as regards fire insurance, repairs, and other like matters.

Purchaser to have benefit of existing insurance.

2. During the period between the sale and completion the property shall be at the purchaser's risk, but subject to the consent of the insurance office, and to payment by the purchaser of a proportionate part of the premiums for the unexpired term of the existing policy of insurance against fire, the purchaser is to be entitled to the benefit of such insurance. The vendors, however, do not guarantee the existence or validity of any such insurance, and shall not be bound to keep up or renew the same.

Purchaser to reimburse vendor for expenditure incurred before completion.

3. If before the completion of the purchase the vendor shall have expended any money in complying with any requirement enforceable against him, and made after the sale by the municipal corporation, county or district council, or other local authority in respect of the property, or of the paving or flagging of the roads, streets, or passages adjoining the same, the purchaser shall, on

(*bb*) See *Horton* v. *Penn*, [1907] 1 K. B. 561.

the completion of the purchase, repay to the vendor the amount so expended by him, and in case any such requirement shall not have been complied with before the completion of the purchase, the purchaser shall indemnify the vendor in respect thereof; but the vendor shall, upon receiving notice of any such requirement, inform the purchaser thereof, and give to him the option of complying therewith in lieu of the vendor so doing, and shall not expend any moneys for any of the purposes aforesaid, unless the purchaser shall request him so to do, or shall refuse or neglect to comply with such requirement.

IX. Reservations and Restrictions—Easements—Tenancies, Charges and Incumbrances—Apportionment (*c*).

Reservation of minerals (*d*).

1. The minerals in or under the property, with all usual powers for working, getting and disposing of the same from and under adjoining property of the vendor [including power to let down the surface, whether built upon or not (*e*)], are reserved to the vendor, his heirs and assigns, but so that the property now offered for sale shall not for the purpose of working such minerals be opened on the surface.

Minerals reserved by former deed, &c. (*f*).

2. The property is subject to the reservations of mines and minerals contained in a conveyance dated the —— day of —— [*or* "the reservation of mines and minerals, and other reservations and liabilities, contained in or imposed by an enclosure award dated the —— day of ——"]. A copy of the said conveyance [award] will be produced at the sale, and may be seen at the office of the vendor's solicitors at any time within —— days previous

(*c*) See *ante*, p. 196, note (*l*), as to the importance of specifically mentioning easements, restrictions, charges, &c. affecting the property.

(*d*) The Court may sanction a trustee with power of sale selling the surface of land without the minerals: Trustee Act, 1893, s. 44, extended by T. Act, 1894, s. 3; *Re Coleman*, 52 Sol. J. 794. The sanction of the Court is not required for an executor (*Re Cavendish and Arnold*, (1912) W. N. 83) or for a mortgagee under a mortgage executed after 1911 (C. Act, 1911, s. 4).

(*e*) The vendor may not let down the surface without these words: see *New Sharlston Collieries Co., Ltd.* v. *Earl of Westmorland*, [1904] 2 Ch. 443, n. As to the right of surface owner to support, see Key & Elph., 10th ed. vol. i. p. 369.

(*f*) See *Re Jackson and Haden*, [1906] 1 Ch. 412, as to the importance of this condition.

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to the sale. And the purchaser shall be deemed to have full notice of the contents thereof.

Means of access, and apportionment of rent.

3. The purchasers shall be deemed to have knowledge of the available means of access to the several lots, and shall make no requisitions or objections on the subject. Some of the lots are held by the tenant with adjoining land at an entire rent; the purchasers shall arrange for the apportionment of such rent.

Purchaser to take subject to rights of way to be reserved to vendor, and with benefit of a right of way to purchaser.

4. The property is sold subject to a right of way of the width of —— feet, for all purposes, to be reserved to the vendors, or as they shall direct, as marked out in the plan, and distinguished by the letters A and B at the extremities thereof. And also with the benefit to the purchaser of a right of way for all purposes, as marked out in the plan, and distinguished by the letters B and D at the extremities thereof.

Easements to be created.

5. The purchaser of lot 1, if that lot is sold separately from lot 2, shall have a right of drainage through lot 2 into ——, as specified in the particulars; and such right, together with proper remedies, if required, for securing the same, shall either be reserved on the sale of lot 2 or granted by the purchaser of lot 2 after the conveyance thereof to him, as the vendor shall direct.

Agreement as to enjoyment of light to windows (*g*).

6. The property is subject to an agreement dated the —— day of ——, 18—, and made between [A. B.], of the one part, and the vendor, of the other part, as to the enjoyment of light to certain windows in the vendor's premises, for which the vendor agreed to pay an annual rent of —— per year if demanded, a copy of which agreement can be seen at the offices of the vendor's solicitors.

Exception of right to light, &c. (*h*).

7. No purchaser shall be entitled to any right of light or air or other easement which would interfere with the free use of any adjoining or neighbouring lot for building purposes, and the conveyances shall contain an express exclusion of any such right or easement

(*g*) On the sale of a portion of a tenement apparent easements which are necessary for the reasonable enjoyment of the part granted over the other part of the tenement pass to the grantee, but with certain exceptions, such as ways of necessity, there is no implied reservation of easements in favour of the grantor: see *Wheeldon* v. *Burrows*, 12 Ch. D. 31; *Broomfield* v. *Williams*, [1897] 1 Ch. 602; *Ray* v. *Hazeldine*, [1904] 2 Ch. 17; *Betts, Ltd.* v. *Pickfords, Ltd.*, [1906] 2 Ch. 87, and other cases.

(*h*) *Haynes* v. *King*, [1893] 3 Ch. 439.

Annuity.

8. The bulk of the property is subject to an annuity or yearly rentcharge of 500*l.* per annum, payable during the life of a lady now aged sixty-five years. The vendor will endeavour to obtain her concurrence in the conveyance, but should he be unable to do so (of which inability a statement in writing, signed by his solicitors, shall be sufficient evidence), the purchaser shall be satisfied with the investment of a portion of the purchase-money in the purchase, in the names of two trustees (one to be appointed by each party), of a government annuity of 500*l.*, or (at the vendor's option) of consols sufficient to produce that amount. The trust deed (if any) necessary for the above purpose shall be prepared by and at the expense of the vendor, the purchaser bearing the expense of the perusal and execution thereof on his part.

Indemnity against annuity.

9. The purchaser shall accept the vendor's bond (to be prepared by and at the expense of the vendor), in the penalty of 100*l.*, against a life annuity of 10*l.* affecting lot —, the same being also amply secured out of large estates belonging to the vendor, which fact, however, it shall not be incumbent on the vendor to prove.

Rentcharges and building covenants (*i*).

10. By the conveyances of the 2nd April, 18—, and 12th December, 18—, respectively, rentcharges of £—— and £—— respectively, with usual powers of distress and entry for securing the same, are limited to the Corporation of ——. The said conveyances of the 2nd April, 18—, and 12th December, 18—, also contain covenants on the part of the grantees relating to payment of the rentcharges, and to building on, and user of the premises comprised in the conveyances respectively, and other like matters. These conveyances or copies thereof will be produced at the sale, and may be inspected at the aforesaid office of Messrs. ——, during the usual business hours, for a week before the day of sale, and the purchaser shall take, subject to and with notice of the said several rentcharges and covenants, and shall covenant in his conveyance to pay and perform the same respectively, and to indemnify the vendor therefrom, and the production of receipts for the last payments of the said respective rentcharges accrued previously to the completion of the purchase shall be

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(*i*) As to the importance of stating specifically in the particulars or conditions the nature of charges and incidents of tenure of an unusual character, see *ante*, p. 196, note (*l*). As to land charges in the case of registered land, see *post*, p. 269.

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conclusive evidence that all the said covenants have been performed up to the completion of the purchase.

Quit rents and incidents of tenure.

11. No objection or requisition shall be made on account of any quit or other rent now or heretofore payable to the lord or lords of the manor of ——, of which both lots are holden, and the sale of each lot shall be subject to all manorial rights and incidents of tenure.

Reservations, &c. in Inclosure Act.

12. All such parts of the property as have been awarded under any Inclosure Act will be sold, and shall be expressed to be conveyed subject to the exceptions, reservations, and provisions of the Act, and the obligations imposed by the award thereunder (*k*).

Repairs of fences, bridges, &c.

13. The property is stated in the entry in the Land Registry, dated, &c., to be subject, with other hereditaments, to such liability for fencing, draining, and repair of bridges as then affected the same. The vendor believes that such liability is practically of no importance no payment having been made or claimed, so far as he is aware, in respect of any of the matters aforesaid for some years past, and each purchaser shall take the property purchased by him subject to the said liability (if any) affecting the same, and shall make no requisition or objection, and shall ask for no information in respect of the grounds of the vendor's said belief, or of the said liability or otherwise in respect or by reason of any of the matters mentioned in this condition.

Restrictive covenants as to building, &c.

14. The deed of —— August, 19—, contains certain covenants on the part of the vendor's testator relative to building and otherwise, and the deed of —— December, 19—, also contains covenants relative to building and otherwise on the part of the vendor. These deeds will be produced at the sale, and may be previously inspected at the office of the vendor's solicitor. The purchaser shall be deemed to purchase the property subject to these covenants, and with full notice of all the contents of these deeds.

Death duties.

15. The property is sold subject to the death duties, which will become due and payable on the decease of the present tenant for life.

Apportionment of land tax, vendor

16. The vendor shall not be required to obtain the apportionment of any land tax, or tithe rentcharge, or to obtain the legal

(*k*) For conditions as to the insertion in the conveyance of covenants and provisions imposing obligations and restrictions on the purchaser, see *post*, pp. 259, 260, 261.

apportionment by consent of tenants, or otherwise, of any rents referred to in the particulars as being apportioned.

not to be required to obtain.

17. The apportionment of the commutation rentcharge in lieu of tithes (which is charged upon the whole of the property now sold) shall be effected by and at the expense of the respective purchasers, and the rentcharge and expenses shall be apportioned in proportion to the amounts of the respective purchase-moneys; and if any lot is unsold, the vendor shall, for the purpose of this condition, be considered as a purchaser for such sum as the same shall be valued at by the auctioneer.

Apportionment of tithe rentcharge.

Rent, creation of.

18. Some part of lot —, reputed to be holden of the lord of the manor of ——, appears to be subject to a chief rent of ——, and a heriot in kind, payable on the death of every tenant; the said lot is sold subject thereto, but the vendor shall not be required to adduce any evidence as to the origin or creation of the said rent or heriot, or to identify the part of such lot on which the said rent and heriot are charged.

Rents, fee farm.

19. The fee farm rent of 2*l.* 5*s.* 6*d.*, mentioned in the particulars of lot 1, appears from the recitals in the said indenture of ——th July, 1872, to be a part of a like rent of 4*l.* 11*s.*, created in or previously to the year 1798: and the rent of 1*l.* 10*s.* mentioned in the particulars of lot 2 appears to be part of a like rent of 2*l.* 5*s.* 6*d.*, created in the year 1796. The vendors shall not be required to furnish any information respecting any of the above-mentioned rents except such as may appear by the abstracted instruments. As regards each of the rents mentioned in the particulars, a receipt for the rent which shall have last accrued previously to the day fixed by these conditions for the completion of the purchase shall be accepted as sufficient evidence that all covenants and conditions affecting the premises have been performed and observed up to the date of such receipt: and the purchaser shall assume that the person by whom such receipt purports to be signed was at the date thereof the person duly qualified to give a discharge for such rent, and that such

Last receipt to be evidence of performance of covenants, &c.;

title of person giving receipt not to be inquired into (*l*).

(*l*) The statutory condition contained in the Conveyancing Act, 1881, s. 3, sub-ss. (4) and (5), applies only to leaseholds; it is therefore necessary, when dealing with property out of which fee farm rents or other rentcharges are issuing, to insert the condition as to the last receipt being evidence, as formerly.

IX. EASEMENTS, RESERVATIONS, CHARGES, &C.

receipt was valid in all respects. No purchaser shall make any objection, requisition, or inquiry on account of the persons entitled to the said larger rents of 4*l.* 11*s.* and 2*l.* 5*s.* 6*d.*, not having concurred in the apportionment thereof or otherwise on account of such larger rents, or on account of any rent antecedent to any of the rents mentioned in this condition, should there be any such antecedent rent: nor shall any purchaser require a surrender of the legal estate in any of the premises by any person holding such legal estate as a trustee for the purpose of securing the rents mentioned in the particulars, and to which the sale is subject as therein mentioned, or either of such rents.

Rentcharge; creation and apportionment.

20. Inasmuch as the fee farm rent of 10*l.*, issuing out of lot —, forms part of a rent of 50*l.*, which, in the year 17—, was granted out of a larger piece of ground, and the remainder of such rent of 50*l.* is amply secured by the residue of the ground charged therewith, the vendor shall not be required to prove the creation or apportionment of the original rent, or the discharge of the premises therefrom, or its being sufficiently secured out of the other part charged, otherwise than by producing the receipts for the said rent of 10*l.* for the last —— years.

X. Compensation for Misdescription, &c. (*m*).

No compensation (*mm*).

1. If any error or misstatement in the particulars [or plan thereto annexed], or in these conditions shall be discovered, the same shall not annul the sale, nor shall any compensation be made by or allowed to the purchaser in respect thereof.

Compensation to be settled by arbitration.

2. If any error or misstatement shall appear to have been made in the particulars [or plan thereto annexed], or these conditions, the sale shall not be annulled thereby, nor shall the purchaser be thereby discharged from his purchase, but a compensation shall be allowed or made to or by the purchaser, as the case may be, and the amount of such compensation shall be settled by arbitration in the usual manner.

No compensation as to quantities; compensation for other matters to be settled by auctioneer.

3. All the measurements and quantities of the property are believed and shall be deemed to be correct, and shall not be the subject of compensation if incorrect. Any misstatement or any error or omission in other respects, which may be discovered in

(*m*) See *ante*, p. 198, note (*p*); *post*, p. 276, note (*i*).

(*mm*) See, as to this condition, *Eastwood* v. *Ashton*, [1914] 1 Ch. 68.

X. COMPENSATION.

the particulars affecting any lot, shall not annul the sale, but if pointed out before completion, compensation shall be paid or allowed on account thereof to the vendor or the purchaser, as the case may be and require, and the amount of such compensation, in case of dispute, shall be settled by the auctioneers. No compensation shall be allowed or paid for any misstatement, error, or omission, unless the same shall be discovered and compensation therefor shall be demanded in writing before the completion of the purchase (*n*).

No compensation as to quantities; compensation for other matters to be settled by arbitration.

4. The quantities of land stated in the particulars having been ascertained by an eminent surveyor about the year —— must be accepted by the purchaser as correct, and if any error or omission in the particulars, or in the description of the property in these conditions, other than an error as to quantity, shall be discovered, the same shall not annul the sale, but compensation shall be allowed by the vendor or purchaser in respect thereof, and such compensation, if the parties differ, shall be settled by two arbitrators or their umpire in the usual way.

XI. Execution, Form, and Contents of Conveyance—Apportionment of Rents of Leaseholds.

Trustees and mortgagees.

1. The vendors being [executors and] trustees [*or*, mortgagees] shall be required to give only the statutory covenant against incumbrances implied by reason of their being expressed to convey as [personal representatives and] trustees [*or*, mortgagees].

Trustees for sale where consenting beneficiary is abroad.

2. The vendors are trustees selling under a power of sale, with the consent of a beneficiary who is abroad, and shall be required only, &c. [*ut ante*]. Such consent shall be sufficiently evidenced by a letter signed by the beneficiary authorising the trustees to effect a sale. The genuineness of the letter and signature shall be deemed to be sufficiently authenticated by a statutory declaration to be made, if required, at the purchaser's expense, by a person acquainted with the handwriting of the beneficiary.

Tenant for life selling under Settled Land Acts (*o*).

3. The vendor is selling as tenant for life, under the powers of the Settled Land Acts, 1882 to 1890, and he shall not be required

(*n*) As to the last sentence of this condition, see *Bos* v. *Helsham*, L. R. 2 Ex. 72; distinguished in *Eastwood* v. *Ashton*, [1914] 1 Ch. 68.

(*o*) As to the covenants for title by a tenant for life in the absence of a condition, see *Earl Poulett* v. *Hood*, L. R. 5 Eq. 115.

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to enter into any covenants for title other than such as are implied by his conveying as beneficial owner, subject to a proviso that as regards the reversion or remainder expectant on his life estate, and the title to and further assurance of the property after his death, such implied covenants shall not extend to the acts or defaults of any person other than himself and his heirs and persons claiming or to claim under or in trust for him or them. The trustees of the said settlement will concur in the conveyance, but only for the purpose of [testifying their consent to the sale and (*p*)] acknowledging the receipt of the purchase-money and of the amount of the said valuation, and their concurrence shall not be required for any other purpose.

Mortgagee not to be required to release by a separate instrument.

4. The property offered for sale is now, with other premises, subject to a mortgage to secure £—— and interest. The purchase-money will be received by the mortgagee in part payment of the mortgage debt. The mortgagee will join in the conveyance to the purchaser, and the vendor shall not be required to procure a reconveyance or release by a separate instrument.

Mortgagee.

5. Upon payment of the remainder of the purchase-money the vendor and her trustee and her mortgagee, and all other necessary parties (if any), will execute a proper assurance of the premises to the purchaser, but such assurance, and every other assurance and act which shall be required by the purchaser for getting in, surrendering, or releasing any outstanding estate, right, title, or interest, or for completing or perfecting the vendor's title, or for any other purpose, shall be prepared, made, and done by and at the expense of the purchaser, and every such assurance shall be tendered or left by him not less than ten days before the —— day of —— next, at the office aforesaid, for execution by the vendor and other necessary parties (if any), and the expense of the perusal on behalf of and execution by all parties (other than the vendor), and her trustee and mortgagee, of all such assurances, as aforesaid, shall be borne by the purchaser. The existing mortgage will be paid off out of the purchase-money, and the mortgagee will concur in the conveyance, and the purchaser shall not require any reconveyance by separate deed.

(*p*) The words in brackets will be required only where the property offered for sale includes the principal mansion house and demesnes, &c.: see Settled Land Act, 1890, s. 10.

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Part of purchase-money to be advanced on mortgage (*q*).

6. If the [any] purchaser shall, within —— days after the sale, give to the vendor's solicitors notice in writing that he desires to borrow any portion not exceeding —— per cent. of the purchase-money, the vendor will advance, or procure to be advanced, to the [such] purchaser the amount stated in such notice; such advance to carry interest at the rate of five per cent. per annum, and to be secured with such interest by mortgage of the property [lot or lots purchased by him] at the purchaser's expense, such mortgage to contain provisions for continuing the loan at the purchaser's option for —— years from the date fixed for completion, conditionally on punctual payment of interest. But this offer to advance part of the purchase-money is conditional on the purchase and mortgage being completed within the time fixed for completion.

Free conveyance (*r*).

7. The [any] purchaser expressing in writing, within seven days after the delivery to him of the abstract, his willingness to accept the title, without making any requisition or objection with respect thereto, shall be entitled to a conveyance of the property [his lot or lots] free of cost, except stamp duty, and a fee of £——, such conveyance to be in a form which will be produced at the sale, and may be seen afterwards at the office of the vendor's solicitors.

Equitable mortgagees not to be required to concur.

8. The agreement for the said lease has [The muniments of title have] been deposited by way of equitable mortgage: there has been no written instrument of deposit, and the equitable mortgagees shall not be required to do more than give a letter to each purchaser stating that they have been paid off.

Equitable mortgagees and bankruptcy trustee.

9. The vendors are equitable mortgagees selling with the concurrence of the trustee of the property of [A. B.], a bankrupt. Upon payment at the time and place above specified of the residue of the purchase-money, and the value of the fixtures, as above mentioned, the said trustee, by direction of the vendors, will convey the freehold and appoint the copyhold portion of the property. The assurances shall be prepared by and at the expense of the respective purchasers, and shall be left for execution at the office aforesaid, not less than ten days before the said —— day

(*q*) For a condition providing for part of the purchase-money to remain on mortgage in the case of registered land, see *post*, p. 270, f. 20.

(*r*) For a condition as to free conveyance in the case of registered land, see *post*, p. 270, f. 19.

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of ——, 19—. The purchasers shall not be entitled to any covenant for title from the vendors, or from the said trustee, other than the implied statutory covenant that they have respectively done no act to incumber.

Executors concur to release charge.

10. The executors of the said [*testator*] will join in the conveyance to release the aforesaid charge in respect of redeemed land tax, and will receive a proper proportion of the purchase-money, such proportion to be settled by the auctioneers.

Execution by power of attorney.

11. The vendor, being abroad, has executed a power of attorney, authorising a sale of the premises mentioned in the particulars annexed hereto. No objection shall be made as to the right of the attorney to sell the said premises, or to anything contained in the said power of attorney, and the conveyance or assignment to the purchaser shall be executed by the attorney, and no objection shall be taken to such execution, nor shall any evidence be required that the vendor is alive at the date of such execution.

Form of conveyance of leaseholds sold in lots: purchaser of largest lot to take assignment and give underleases to other purchasers (*s*).

12. Lots —— being held under one lease at an entire rent, the purchaser of the largest part thereof in value (in this condition referred to as the lessor) shall take an assignment of the said lease, and shall be entitled to possession of all the common title deeds, and shall execute to the other purchasers underleases for the unexpired residue of the term granted by the original lease, wanting three days, of their respective lots, at the apportioned rents mentioned in the particulars. Such underleases shall contain all necessary covenants for indemnifying the several purchasers in respect of the performance of the covenants or payment of apportioned parts of the rent in respect of any other lots than their own, and for securing the payment of such apportioned parts of the rent, and performance of the covenants by the several purchasers in respect of their own lots; and each underlease, and a counterpart thereof for delivery to the lessor, shall be prepared, engrossed, and stamped by and at the expense of the purchaser who is to be lessee thereunder, and shall be executed by the lessor and lessee

Other modes of conveying leaseholds sold in lots.

(*s*) Another plan is to make one purchaser, selected by the vendors, take an assignment of the lease subject to underleases previously granted by the vendors to the other purchasers: see Key & Elph., 10th ed. vol. i. p. 345; and see note (*d*), *ibid.* Another mode is for all the purchasers to take assignments as in Form 13. Or lastly, where the concurrence of the original lessor can be obtained the lease may be surrendered, and a fresh lease at an apportioned rent granted to each of the purchasers: see Conveyances, Prec. LXI., LXII., and LXIII., *post*, pp. 434 *et seq.*

XI. CONVEYANCE—APPORTIONMENT OF RENTS.

respectively, and shall contain all proper covenants by them, having regard to the form of the principal lease. And the lessor shall give to the underlessee an acknowledgment of his right to production and delivery of copies of the principal lease, and of any documents relating thereto retained by the lessor, and an undertaking for safe custody thereof. And if any one of the said five lots remains unsold the vendors may, at their option, stand for the purposes of this condition in the place of the purchaser of the largest part in value.

Form of conveyance of leaseholds sold in lots: purchasers to take assignments and give mutual powers of distress, &c.

13. Lots 1 and 2 being held under one lease at an entire rent, the purchasers of those lots shall take assignments of their respective lots at the apportioned rents mentioned in the particulars, and shall thereby enter into mutual covenants for payment of their respective proportions of the rent and performance of the covenants and conditions of the original lease, and shall give to each other mutual powers of distress and entry as an indemnity against such respective proportions of rent and breach of such covenants and conditions. If either lot shall remain unsold the vendor shall stand in the place of the purchaser of the unsold lot for the purposes of this condition.

Covenants not to carry on business so as to inconvenience adjoining occupiers.

14. The conveyance shall contain proper covenants by the purchaser not to use, or permit or suffer to be used on the property conveyed any engine or shafting or machinery so or in such manner as to cause or occasion any noise or vibration which shall be audible or perceptible on any part of the adjoining premises of the vendors, and not to place, or permit or suffer to be placed, against or within ten feet of the party wall between the said property and the said adjoining premises, any boiler or any flue connected with a furnace, or any steam-engine or gas-engine or other engine of the like nature, or any shafting or machinery connected with any such engine, and not to carry on, or permit or suffer to be carried on, upon the said property any noisy, noisome, or offensive trade or business, or do, or permit to be done thereon, any act that shall in anywise prejudice or be an annoyance (*t*) to the said adjoining premises, or the owners or occupiers thereof, for the time being, and not to execute any deed relating to the said property unless the same contains a reference to such covenant.

Restrictive covenants.

(*t*) See *Tod-Heatly* v. *Benham*, 40 Ch. D. 80. As to when and how restrictive covenants may be annexed to the land, see K. & E., 10th ed., vol. 1, pp. 373 *et seq.*

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Building conditions (*u*). Fences.

15. Every purchaser shall, within one month after being let into possession of the plot purchased by him, make and afterwards maintain a sufficient boundary fence to his plot, and also on the side [*or*, sides] of his plot, marked "T" on the sale plan, such fences to be not less than four feet six inches or more than six feet in height; in case any such fence shall not be duly made and maintained, the owner or owners, or either of them, for the time being of the land immediately adjoining that side of the plot in respect of which such default shall have happened may enter upon such plot, and make and repair such fence, and recover the expenses thereby incurred from the said defaulter. In case of dispute the opinion of the vendor's surveyor as to the sufficiency of any such fence shall be decisive.

Houses.

No house shall be erected which shall be of less value than £—— for a detached house, or £—— for a pair of houses. The value of a house shall be taken to be its first costs in materials and cost of labour and construction only. Every house to be erected upon any portion of the land shall be used or occupied as a private dwelling-house only, and no other erection shall be built upon either plot, except outbuildings or offices to such dwelling-houses, without the consent in writing of the vendor, his heirs, or assigns.

Conveyance to contain covenants to observe stipulations.

The conveyance to each purchaser at the present sale shall contain covenants by the purchaser to observe the above stipulations, but no covenants shall be personally binding on any purchaser after his estate and interest in the land to which the covenants relate shall have ceased (*v*). No purchaser of any lot sold at this sale shall be entitled to inquire whether this present condition has been complied with by the purchaser of any other lot, or to delay completion of his purchase on the ground that any other lot or lots remain unsold, or that the sale thereof has not been completed.

Roads.

16. Every purchaser shall within —— calendar months after the day of sale, at his own expense, with proper materials and in a workmanlike manner, make and form into a road fit for carts, waggons and carriages, such part or parts of the lot or lots purchased by him, as is or are in the sale plan delineated as part or parts of a projected street or projected streets, and shall thereafter, until the same shall be adopted as a public highway, at his

(*u*) For other stipulations, see *ante*, p. 214.

(*v*) See *Williams* v. *Hathaway*, 6 Ch. D. 544, where the covenant was limited; and *Pollock* v. *Rabbits*, 21 Ch. D. 466, where it was unrestricted.

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own expense, repair and maintain the same with proper materials and in good condition, so as to be fit for use as aforesaid. And every person passing to or from any of the lots, or any part thereof respectively, shall at all times after the day of the sale have the right, with or without carts, waggons, carriages, or other vehicles (however propelled), horses or other animals, to pass and repass over all the said projected streets or the sites thereof respectively, and the several conveyances shall be made subject to the liabilities and rights created by or mentioned in this condition. But no purchaser shall require the production of, or investigate or make any objection or requisition in respect of the title to any part of any projected street, except such as is comprised in his own lot or lots; and the vendors shall not be bound or concerned to enforce any such liabilities or rights as aforesaid, further or otherwise than by requiring every such conveyance to be made subject as aforesaid. If any of the lots be not sold at this sale the vendors shall not, for the purposes of this condition, stand in the place of a purchaser of such lot or lots, so as to be bound to make or maintain part of any such projected street or streets as aforesaid, but the purchasers of the lots sold shall have the same rights of passage over the sites of such projected streets being unsold, as they would have had if such sites had been sold.

Roads.

17. The respective purchasers of lots 1, 2 and 3 are to covenant in their conveyances to make the road referred to in the particulars of those lots respectively, but no purchaser of any of those lots shall be entitled to defer completion of his purchase until the sales of the others of such lots are completed.

Indemnity to vendor against rents, &c. in lease.

18. The purchaser shall indemnify the vendors and the estate of their testator against the several rents, covenants, agreements, and obligations, to which the leasehold premises respectively are subject, and in case the vendors shall deem it expedient that such indemnity be provided for by the execution and delivery of counterparts of the assignments, or any of them, the purchaser shall, at his own expense, execute and deliver such counterparts, but the cost of engrossing and stamping such counterparts will be borne by the vendors.

Conveyance to contain covenant to allow adjoining occupier to enjoy rights.

19. The property is sold subject to the right of the owner of the adjoining messuage and premises, No. —, —— Street, her heirs and assigns, at all times hereafter, to the full and free use and enjoyment of the rain-water gutters and pipes from the eaves at the back of the said messuage and premises, and of all

XI. CONVEYANCE—APPORTIONMENT OF RENTS.

the drainage and water supply leading from and to the lavatory in the said last-named messuage to the messuage and premises now offered for sale, with the full and free right to enter on the said messuage and premises now offered for sale, for the purpose of opening the ground, drains, and pipes, and repairing such drains, pipes, drainage, and water supply, when and as often as shall be required by such owner, her heirs and assigns. The purchaser shall in his conveyance covenant with the present owner to observe the stipulations mentioned in this condition relating to the said drainage, water supply, and other matters.

XII. Custody of Deeds and Documents of Title (*w*).

Custody of muniments of title where some are retained by the vendor (*x*).

1. Such of the muniments of title in the vendor's possession as relate exclusively to the property sold, will be delivered to the purchaser. The vendor will retain all other deeds and documents, and will give to the purchaser the statutory acknowledgment of the right to production and delivery of copies, and undertaking [but not any undertaking or covenant] for safe custody thereof, any such acknowledgment [and undertaking to be prepared by and at the expense of the purchaser.

The same, on sale of property in several lots.

2. Deeds and documents of title relating to the premises sold, and also to other property or matters, shall be retained by the vendor, who shall give the usual acknowledgment and undertaking (*x*) relating thereto. Documents of title, other than documents of record relating exclusively to the premises sold shall, if in the vendor's possession and affecting one lot only, be delivered to the purchaser of such lot, but if affecting two or more lots shall be delivered to such of the purchasers as the vendor may think fit, *or* "to the purchaser of lot 1," who shall give the usual and proper acknowledgment and undertaking relating thereto to the purchaser of the other lot or lots to which such documents relate; but the said documents may be retained by the vendor, if he thinks fit, without acknowledgment or undertaking, until all the lots to which they relate have been sold; no purchase shall be delayed on account of anything under this condition. Every acknowledgment or undertaking hereunder shall be prepared by and at the expense of the purchaser requiring the same, but shall be perused and

(*w*) See V. & P. Act, 1874, s. 2 (4) (5); and C. A. 1881, s. 9.

(*x*) On a sale by trustees the acknowledgment, but not the undertaking, will be given.

executed by the party giving the same at his own expense; and no purchaser shall object to the absence of any sufficient covenant, acknowledgment, or undertaking, or to any existing covenant, acknowledgment, or undertaking with reference to such documents. XII. CUSTODY OF TITLE DEEDS.

3. The mortgage deed under the [implied] power of sale in which the property is offered for sale, comprises other land not now offered for sale. This deed will be retained by the vendor until the whole of his mortgage debt is discharged, when it will be handed over to the purchaser at the present sale, who shall in the meantime be entitled, at his own expense, to production of and copies of such mortgage deed, but not to any covenant for, or any acknowledgment of, the right of the purchaser to production of the deed, nor any undertaking for safe custody thereof. Custody of mortgage deed until the debt is paid off.

4. No purchaser shall be entitled to the possession or production, or to any covenant, acknowledgment, or undertaking for the production or furnishing copies or safe custody of any will or other muniment of title which is on record, or of any muniment of title not in the vendors' possession, of which an attested or other verified copy can be procured by and at the expense of the purchaser, or to any acknowledgment or undertaking in respect of any such will or muniment. Condition negativing purchaser's right to production, &c.

5. The vendors reserve the right of retaining in their possession the settlement of which they are trustees, and any other documents in their possession or power relating to their trust, and will in that case give to the purchaser a statutory acknowledgment of his right to the production of the documents so retained, and to delivery of copies thereof, but not any undertaking or covenant for safe custody thereof. Retention of settlement by trustees.

6. Such deeds or documents relating to the property now sold [lot 2] as the vendors are now under a covenant or obligation to produce to the owner or owners of other property will, on the sale of all the vendors' property therein comprised, be handed over to the purchaser [of lot 2], who shall give to such owner or owners the usual acknowledgment of right to production and undertaking for safe custody of the said deeds; but if such owner or owners are not bound to accept, and will not accept, such substituted acknowledgment and undertaking, the purchaser [of lot 2] shall take upon himself the vendors' liability under such covenant or Purchaser to enter into substituted covenants with owners of other property for production of deeds delivered to him (*y*).

(*y*) This condition will only be required where the vendor's liability will remain after parting with the deeds.

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obligation, and shall, if required, enter into a covenant with the vendors to carry out such covenant or obligation as aforesaid, and to indemnify the vendors against all liability thereunder. All instruments necessary to carry out this condition to be prepared and executed by and at the expense of the purchaser, save only as to the expense of the perusal and execution by or on behalf of the vendors.

XIII. REGISTERED LAND.

PRELIMINARY NOTE.

In selling registered land the important question to consider is what title is to be shown. By the Land Transfer Act, 1897, s. 16, it is provided as follows:—

Title to be shown under L. T. A.

(1) A purchaser of registered land shall not require any evidence of title, except—

(i) The evidence to be obtained from an inspection of the register, or of a certified copy of or extract from the register.

(ii) A statutory declaration as to the existence or otherwise of matters which are declared by sect. 18 of the principal Act (Land Transfer Act, 1875) and by this Act not to be incumbrances.

(iii) If the proprietor of the land is registered with an absolute title, and there are incumbrances entered on the register as subsisting at the first registration of the land, either evidence of the title to those incumbrances or evidence of their discharge from the register.

(iv) Where the proprietor of the land is registered with a qualified title, the same evidence as above provided in the case of absolute title, and such evidence as to any estate, right or interest excluded from the effect of the registration as a purchaser would be entitled to if the land were unregistered.

(v) If the land is registered with a possessory title, such evidence of the title subsisting or capable of arising at the first registration of the land as the purchaser would be entitled to if the land were unregistered.

In the case of a leasehold land (Land Transfer Act, 1875, s. 11) where the proprietor is registered with a "good leasehold title" (Land Transfer Rules 52 and 54) the registration does not affect the lessor's title, but otherwise has the same effect as registration with an absolute title (Land Transfer Rule 56).

Abstract to be furnished.

The result of these provisions is that on the sale of registered land the vendor must (a) in all cases (1) give the purchaser an authority to inspect the register, and (2) furnish him with an abstract of the land certificate (in the case of leaseholds, of the certificate or the lease), and of all entries indorsed on the land certificate (or on the office copy of the registered lease), subsequent to first registration and in addition thereto; (b) in the case of an "absolute title" furnish an abstract of "incumbrances" entered on the register at first registration, and not since cancelled or withdrawn; (c) in the case of a qualified title furnish an abstract of any "estate, right, or interest excluded from the effect of registration"; and (d) in the case of a "possessory title" furnish an ordinary abstract of title for the statutory or stipulated period down to the entry of the first registered proprietor, and as regards any estate or interest disclosed by such title continuing the abstract down to the date of sale.

Dealings off the register.

Dealings off the register with registered land (see Land Transfer Act, 1875, s. 49; and *Capital and Counties Bank* v. *Rhodes*, [1903] 1 Ch. 631) need not be abstracted, but any notice, caution, inhibition, or other restriction entered on the register for the purpose of protecting such unregistered dealings must be cancelled or withdrawn, or be shown to have ceased.

Liabilities under sect. 18 of L. T. A., 1875.

Where a notice of any of the liabilities specified in sect. 18 of the Land Transfer Act, 1875, and which, in the case of unregistered land would on a sale be deemed "incumbrances," is entered on the register (see Land Transfer Rules 208 to 215), in the absence of a stipulation to the contrary, it will be incumbent on the vendor to show that they no longer exist, and to have the entry removed.

Unregistered proprietors of registered land or charge.

Under sect. 16 (2) of the Land Transfer Act, 1897, the vendor of registered land, not being himself registered as proprietor of the land or of a charge giving him a power of sale over the land, must at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of the

charge, as the case may be, or procure a transfer from the registered proprietor to the purchaser; and by sub-sect. (3) of the same section, in the absence of special stipulation, a vendor, if registered with an absolute title, shall not be required to enter into any covenant for title, and if registered with a possessory or qualified title, shall only be required to covenant against estates or interests excluded from the effect of registration; and the implied covenants under sect. 7 of the Conveyancing Act, 1881, shall be construed accordingly.

Covenants for title by registered proprietor.

Easements.

As to how easements over registered land can be created, and as to whether an easement annexed to registered land passes by a registered transfer of the land, see K. & E., 10th ed., Vol. I., p. 265.

Other points arising on the sale of registered land, or of unregistered land in a compulsory area, appear in the notes to the following forms and to various precedents in this volume.

SPECIAL CONDITIONS ON SALE OF REGISTERED LAND (*a*).

Abstracts: Freeholds registered with an absolute title.

1. The vendor [A. B., of ——], is registered as proprietor of the property described in the particulars (*b*), with an absolute title under the Land Transfer Acts, 1875 and 1897. The title shall consist of a copy of the land certificate and the entries indorsed thereon, and a copy of or extract from the filed plan (*c*) [together with a supplemental abstract commencing with, &c., and deducing the title to the incumbrances entered on the register at the first registration, and not since cancelled or withdrawn (*cc*)], and no further or other abstract shall be required.

Freeholds with qualified title.

2. The vendor [A. B., of ——], is registered as proprietor of the property described in the particulars, with qualified title

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(*a*) As to the evidence of title which a purchaser of registered land may require, see L. T. Act, 1897, s. 16 (1), set out *ante*, p. 264.

Mines and minerals.

(*b*) If mines or minerals are excepted from the sale the particulars should show the nature and extent of the exception. As to registering the proprietorship of mines and minerals, whether as part of or as severed from the land, see L. T. Rules, 213 and 214. For the forms of transfer of land excepting or specifying mines and minerals, see L. T. Rule, 134.

(*c*) See L. T. Act, 1897, s. 8.

(*cc*) See L. T. Act, 1875, s. 7, and L. T. Act, 1897, s. 16.

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under the Land Transfer Acts, 1875 and 1897, excepting from the effect of such registration any estate, right, or interest arising before the —— day of —— [*or*, "under an indenture dated the —— day of ——, being, &c."] [*state shortly the nature of the instrument*]. The abstract of title shall consist of copies of the land certificate and of the entries indorsed thereon, together with a supplemental abstract of the prior title commencing with, &c. [*or*, "of the title under the said indenture"] [and a further abstract commencing with, &c., of the title to the incumbrances entered on the register at the first registration, and not since cancelled or withdrawn] [*add special conditions as to unregistered title, if necessary*].

Freeholds with possessory title.

3. The vendor [A. B., of ——], is registered as proprietor of the property, with possessory title under the Land Transfer Acts, 1875 and 1897. (First registration dated —— day of ——.) The title shall consist of copies of the land certificate and the entries indorsed thereon, and an abstract of the prior title commencing, &c. [*add special conditions as to title and evidence, if necessary*].

Leaseholds with absolute or good leasehold title (*d*).

4. The vendor [A. B., of ——], is registered as proprietor of the leasehold land described in the particulars, with absolute [good leasehold] title under the Land Transfer Acts, 1875 and 1897. The abstract of title shall consist of copies of the leasehold land certificate and the entries indorsed thereon [*or*, "an abstract of the lease dated the —— day of ——, under which the property is held, and of the entries in the register indorsed on the office copy thereof"] [and a supplemental abstract commencing with, &c., and showing the title to the incumbrances entered on the register at the first registration, and not since cancelled or withdrawn].

Leaseholds with qualified title (*e*).

5. The vendor [A. B., of ——], is registered as proprietor of the leasehold land described in the particulars, with qualified title under the Land Transfer Acts, 1875 and 1897, excepting from the effect of such registration any estate, right, or interest arising before the —— day of —— [*or*, "under an indenture dated, &c."]. The abstract of title shall consist of copies of the leasehold land

(*d*) As to registration of land with leasehold title, "absolute," "good," "qualified," or "possessory," and as to the effect of such registration, see L. T. Act, ss. 11, 13; L. T. Rules, 50—67 and 143; and L. T. Rules, 1908, 53.

(*e*) See L. T. R. 59.

ON SALE OF REGISTERED LAND.

certificate and of the entries indorsed thereon [*or*, "of the lease dated the —— day of ——, under which the property is held," and "of the entries in the register indorsed on the office copy thereof"], together with a supplemental abstract of the prior title commencing, &c. [*or*, "of the title under the said indenture"] [and a supplemental abstract commencing, &c., of the title to the incumbrances entered on the register at the first registration, and not since cancelled or withdrawn].

Leaseholds with possessory title.

6. The vendor [A. B., of ——], is registered as proprietor of the leasehold land described in the particulars, with possessory title under the Land Transfer Acts, 1875 and 1897. (First registration dated the —— day of ——, 18—.) The title shall consist of copies of the leasehold land certificate and of the entries indorsed thereon [*or*, "of the lease dated, &c., under which the property is held," and "of the entries in the register indorsed on the office copy thereof"], and an abstract of the prior leasehold title commencing, &c. [*add special conditions, if necessary*].

Vendor holding under an unregistered assurance (*f*).

7. In the year —— A. B., of ——, who is the registered proprietor, with a possessory ["absolute" *or* "qualified"] title of the land described in the particulars, conveyed the same to the vendor by an unregistered assurance protected by an entry on the register. The vendor will, if required, upon completion, at his own expense, procure the registration of himself as proprietor, or a transfer from the said A. B. to the purchaser.

Sale by proprietor of registered charge (*g*).

8. The vendor is selling as the registered proprietor of a charge with power of sale in exercise of the power conferred by the Conveyancing Act, 1881.

Where the vendor has the right to be registered (*h*).

9. The vendor will, at his own expense, upon completion procure himself to be registered as proprietor of the land described in the particulars, or show to the satisfaction of the registrar his right to be so registered.

(*f*) As to the effect of an assurance by an unregistered deed after land has been placed on the register, see *Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631; *Re Vos and Saunders' Contract*, [1911] 1 Ch. 42. See sect. 16 (2) of the L. T. Act, 1897, as to vendor holding under an unregistered title being bound to procure registration of himself or transfer to the purchaser.

(*g*) See L. T. A. 1897, s. 9; and C. A. 1911, s. 5 (1).

(*h*) L. T. A. 1897, s. 9 (6); L. T. R. 104.

ON SALE OF REGISTERED LAND.

10. The purchaser shall not make any objection or requisition in respect of any land charge [which became charged on the land after the registration of the first proprietor (*k*)] of which there is no entry on the charges register at the date of any priority notice lodged on behalf of the purchaser. Land charges (*i*).

11. Any statutory declaration which may be required pursuant to sect. 16 of the Land Transfer Act, 1897, shall be furnished at the purchaser's expense. Statutory declaration under sect. 16 of the L. T. Act, 1897.

12. Where a notice or entry on the register has been cancelled or removed from the register the estate, liability, rent, right, interest, incumbrance, or conditions intended to be protected by such notice or entry shall be assumed to have ceased and no longer to affect the land. Cancellation or withdrawal of notices or entries on the register (*l*).

13. The vendor shall not be required to show any title to easements, profits *à prendre*, conditions, or covenants for the benefit of the land noted in the property register. Easements, &c.

14. As soon as the title is accepted, the vendor will, at the request and cost of the purchaser, lodge at the Land Registry a notice accompanied by the land certificate, reserving priority to the transfer to be made to the purchaser. Priority notice (*m*).

15. Upon the written request of any purchaser who has accepted the title, the vendor will concur with him, at his expense, in applying for his provisional registration as proprietor, and will, on payment of the balance of the purchase-money within the period specified in the application, hand to such purchaser the land certificate of the property [lot or lots purchased by him]. Provisional registration (*n*).

16. Within —— days after completion, the purchaser shall be registered as proprietor of the property purchased by him, and shall produce to the vendor the land certificate as evidence that he, the purchaser, has been so registered. Completion where liability attaches to the holder of the legal estate.

17. On payment of the balance of the purchase-money the [each] purchaser shall be entitled to a proper assurance of the property [lot or lots purchased by him] by deed off the register Completion by deed off the register and by registered transfer.

(*i*) As to registration of land charges, see L. T. R. 170.

(*k*) The words in brackets will be required in the case of possessory title.

(*l*) As to cancellation of entries by the registrar, see L. T. R. 17.

(*m*) As to priority notices, see L. T. R. 117.

(*n*) The provisional registration of an intended transferee as proprietor may be made upon the joint application of the registered proprietor and an intended purchaser of the whole or part of the land comprised in a title: see L. T. R. 157, as amended by L. T. R. 1907.

ON SALE OF REGISTERED LAND.

from the vendor and all other necessary parties, and to a proper transfer thereof, and to the land certificate and to certificates of any registered charges discharged out of the purchase-money [affecting such property [lot or lots] only, and also to have the certificate of any registered charges affecting such property [lot or lots], and other property deposited at the Registry, to enable the purchaser to be registered free therefrom], such assurance and transfer to be prepared by and at the expense of the purchaser [and to contain such reservations to the vendor, grants of easements, covenants, and conditions as are proper, having regard to these conditions].

After completion and until registration as proprietor the purchaser [of any lot] shall have the same rights as if the certificate [and certificate of charge] had been deposited with him to secure his purchaser's lien.

Completion by registered transfer only.

18. On payment of the balance of the purchase-money, the [each] purchaser shall be entitled to a proper transfer of the property [lot or lots purchased by him], and to the land certificate and to certificates of registered charges discharged out of the purchase-money [affecting such property [lot or lots] only, and also to have the land certificate of any registered charges affecting such property [lot or lots] and other property deposited at the Registry to enable the purchaser to be registered free therefrom], and also to have an application signed by all necessary parties for the withdrawal of any restriction affecting the property [lot or lots], such transfer to be prepared by and at the expense of the purchaser. After completion and until, &c. [*continue as in last form*].

Free conveyance.

19. Each purchaser who shall sign the subjoined form of application for provisional registration (*o*), and the subjoined memorandum of his election to accept the title without objection or requisition, shall, on payment of the balance of the purchase-money within —— days after the sale, be entitled to a land certificate showing him as the proprietor of the lot or lots purchased by him, such certificate to be delivered to him free of all expenses except the *ad valorem* duty on the registered transfer.

After completion, and until, &c. [*continue as in Forms* 17 *and* 18].

Part of the purchase-money to

20. Upon the written request of the [any] purchaser to the

(*o*) See *ante*, p. 269, note (*n*).

ON SALE OF REGISTERED LAND.

vendor's solicitors, made not less than —— days before completion, the vendor will lend to him such sum not exceeding two-thirds of the purchase-money as may be named in the request, such loan to bear interest at the rate of —— per cent. per annum, and to be secured on the property [lot or lots purchased by him] by [a mortgage off the register] a registered charge [a deed after registration restoring the legal estate to the vendor subject to redemption, and a restriction protecting such estate], such instrument or instruments to be prepared by the vendor's solicitors, and to contain all reasonable provisions. Immediately after completion the purchaser shall apply for the registration of himself as proprietor, and leave with the registrar the said instrument of charge for registration and an application for the said restriction.

remain on mortgage (*p*).

CONTRACTS FOR SALE.

PRELIMINARY NOTE.

Stamps.

SUBJECT to the provisions of sect. 59 of the Stamp Act, 1891, a contract for sale, if under hand, bears a 6*d*. stamp (*pp*); if by deed, a 10*s*. stamp. (See *tit.* "Agreement" and "Deed" in the first schedule to the Act.) The above mentioned Act enacts by sect. 59, sub-sect. (1) that any contract for the sale of any equitable estate or interest in any property, or for the sale of any estate or interest in any property except (1) land, (2) property out of the United Kingdom, (3) goods, (4) marketable securities, or (5) ships, shall be charged with *ad valorem* duty as if it were a conveyance; but by sub-sect. (4), where the contract is stamped with the 6*d*. or 10*s*. stamp (as the case may require), it shall be regarded as duly stamped for the purpose of proceedings for specific performance or damages; and further (sub-sect. (5)), if the conveyance is presented for stamping with the *ad valorem* duty within six months after execution of the contract, the conveyance is to be stamped accordingly, and the contract deemed to be duly stamped. By sub-sect. (3), where *ad valorem* duty

(*p*) For forms of mortgage, see Mortgages, Vol. II. p. 181.

(*pp*) By sect. 22, the duty of 6*d*. may be denoted by an adhesive stamp, to be cancelled by the person by whom the agreement is first executed.

has been paid on the contract, the Commissioners shall either denote such payment on the conveyance or shall transfer the *ad valorem* duty thereto; and by sub-sect. (6), if the contract is annulled, *ad valorem* duty paid thereon is to be returned.

Previously to registration of a "first proprietor of any land," it is the duty of the Registrar to ascertain that all stamp duties have been paid. (See Land Transfer Act, 1875, s. 83 (7).) Where a transaction is carried out by an instrument off the register as well as by a registered instrument, the stamp is to be affixed to the unregistered instrument, and the registered instrument will bear no stamp. (L. T. R. 123.) See further, as to stamp duty, L. T. R. 124, 125.

PRECEDENTS.

I. AGREEMENT *for the* SALE *of* FREEHOLDS *or* COPYHOLDS *with the usual* STIPULATIONS.

Parties.

AN AGREEMENT (*a*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor") (*b*), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part; WHEREBY IT IS AGREED as follows:—

Agreement for sale and purchase.

Parcels.

1. The vendor shall sell, and the purchaser shall purchase, for the sum of £——, ALL THOSE several pieces or parcels of land, situate, &c. [*parcels*], and which said premises hereby agreed to be sold are more particularly described in the schedule hereto and are delineated in the plan annexed hereto and therein coloured pink, with the appurtenances thereof, for an estate of inheritance in [customary] fee simple [according to the custom of the manor of ——, in the county of ——] in possession, free from incumbrances except as hereinafter mentioned (*c*).

(*a*) Stamp, 6*d*.

(*b*) Where the agreement is signed by an agent for the vendor, say, "BETWEEN [A. B.], of, &c., as agent for and on behalf of [*vendor*], of, &c. (hereinafter referred to as 'the vendor'), of the one part."

Schedule of incumbrances.

(*c*) *Or*, "except such as are mentioned in the schedule hereto."

Fee farm rent.

Or, "a fee farm rent payable to the lord of the manor of —— out of the said premises only excepted."

2. [*Provision as to valuation of timber, or fixtures, if any, see Special Conditions, VII.*, ante, *p.* 245.]

Timber or fixtures to be taken at a valuation.

3. The purchaser shall pay a deposit of £—— on the execution of this agreement. The remainder of the purchase-money shall be paid [together with the amount of such valuation as aforesaid] to the vendor or as he shall direct, on the —— day of —— next, at the office at ——, of Messrs. ——, the vendor's solicitors,

Payment of deposit (*d*).

Or, "a mortgage of the said premises by indenture dated the —— day of ——, 19—, and expressed to be made between [*parties*] for securing the payment of the sum of £—— and interest only excepted: And which sum of £—— and the interest thereon from the —— day of —— now next, it is hereby agreed shall be paid and discharged by the purchaser, who shall indemnify the vendor therefrom."

Mortgage.

Or, "an annuity, or rentcharge, of £—— payable to —— for his life, out of the said premises, and secured by indenture dated, &c., and made, &c., and the term, estate, and interest thereby created only excepted; And which annuity (or rentcharge), from, &c." [*as above*].

Annuity.

Or, "other than and except the several leases or tenancies mentioned in the schedule hereto as affecting the same or parts thereof."

(*d*) As to the payment of a deposit, see *Ellis* v. *Goulton*, [1893] 1 Q. B. 350. If part of the purchase-money is to remain on mortgage, substitute for clause 3 in the text the following provisions:—

Part of purchase-money to remain on mortgage.

"The purchase shall be completed on the —— day of —— next, at the office at ——, of Messrs. [A. and B.], the vendor's solicitors. The said purchase-money shall be paid or secured to the vendor as follows: the sum of £—— part thereof shall be paid by way of deposit on the signing of this agreement, the sum of £—— further part thereof, with interest thereon (in the event of delay in completion) at the rate of —— per cent. per annum, until the purchase is actually completed, shall be paid upon the execution of the assurance to the purchaser, and the remainder thereof, with interest thereon at the rate aforesaid, from the time fixed for completion shall be secured on the property by a mortgage in fee, to contain such powers and provisions, and to be in such form as the vendor shall require, and to be prepared by the

I. SALE OF FREEHOLDS OR COPYHOLDS.

at which time and place the purchase shall be completed. If from any cause other than the vendor's wilful default, the completion shall be delayed beyond the said —— day of ——, the purchaser shall pay interest on [the balance of] his purchase-money [and on the amount of such valuation as aforesaid] at the rate of —— per cent. per annum from that day until actual payment thereof. But this provision is without prejudice to the vendor's rights under any other clause of this agreement.

Possession and outgoings.

4. Possession or receipt of the rents and profits shall be retained and all outgoings not payable by the tenant shall be discharged by the vendor up to the —— day of —— next, as from which day possession or receipt of rents and profits shall be taken, and outgoings shall be discharged by the purchaser, such rents, profits, and outgoings to be apportioned, if necessary. But the purchaser shall not be let into actual possession of the property until actual completion of the purchase.

Production of leases, &c.

5. Counterparts or copies of the leases or written agreements with the tenants have been produced to the purchaser, and he shall be taken to have full notice of the contents thereof, and of the terms of the tenancies, and of the rights affecting the property, notwithstanding any incomplete or inaccurate statement thereof herein.

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vendor at the purchaser's expense, and to be executed immediately after the assurance to the purchaser."

In the case of registered land, see *ante*, p. 270; and see L. T. R. 96. If the purchase-money is to be paid by instalments, after the provision for completion continue as follows:—

Purchase-money to be paid by instalments.

"The purchase-money with interest thereon, or on the unpaid part thereof, at the rate of —— per cent. per annum, shall be paid by half-yearly instalments of £—— each on the —— day of —— and the —— day of —— in each year, the first of such instalments [together with the amount of such valuation as aforesaid] to be paid on the —— day of —— next, and with each instalment interest at the rate aforesaid shall be paid on the purchase-money remaining unpaid. PROVIDED that if default shall be made in payment of any instalment of principal or interest for thirty days after the same becomes due, the whole of the purchase-money then unpaid, with interest thereon, shall become immediately payable [and shall be secured on the property by a mortgage, &c., *as above*]."

6. The property is sold subject to the reservation of mines, &c. contained in an indenture, &c. [*see Special Conditions, IX.*, ante, *p.* 249] (*dd*).

Reservations and restrictions.

7. The vendor shall within —— days from the date thereof deliver to the solicitors of the purchaser an abstract of his title to the premises, commencing with an indenture, being a conveyance on sale dated, &c. [*or as the case may be*] (*e*) [*add special conditions as to title, evidence and other matters, if required*]. The purchaser shall make in writing and deliver to the solicitors of the vendor his objections and requisitions (if any) arising on the abstract or this agreement within —— days after delivery thereof; And all objections and requisitions which shall not be made and sent as aforesaid within the time specified, shall be deemed to have been waived, and for this purpose time shall be of the essence of the contract (*f*).

Delivery of abstract.

Delivery of requisitions.

8. In case the purchaser shall make any objection to, or requisition on the title, which the vendor shall from any cause, or on any grounds whatever, be unable or unwilling to answer or comply with, the vendor shall be at liberty (notwithstanding any attempt to answer or comply with such objection or requisition, or any previous or pending negotiation or litigation), at any time upon giving the purchaser not less than —— days' notice in writing to rescind the sale, and unless the objection or requisition shall, in the meantime, be withdrawn the sale shall at the expiration of such notice be annulled; and in that case the vendor shall return the deposit, but the purchaser shall not be entitled to any interest, costs, or compensation, or other payment whatsoever.

Requisitions insisted on may entitle vendor to rescind (*g*).

9. In addition to all expenses by law made payable by a purchaser (*h*), the purchaser shall bear all expenses of and incidental to making, procuring, verifying, furnishing, producing, and examining all attested, stamped, office, or other copies and abstracts of and extracts from Acts of Parliament, inclosure awards, records, proceedings of Courts, court rolls, deeds, wills, probates,

Expenses of making copies of deeds, &c., whether in vendor's possession or not, to be borne by purchaser.

(*dd*) As to the importance of mentioning specifically all rights, easements, &c. known to the vendor, see *ante*, p. 196, note (*l*).

(*e*) See Special Conditions, IV., p. 229; and as to registered land, see Preliminary Note, *ante*, p. 265.

(*f*) See *ante*, pp. 198, 199, notes (*s*), (*t*).

(*g*) As to this stipulation, see *ante*, Conditions of Sale, p. 199, notes (*u*) and (*x*).

(*h*) See Conveyancing Act, 1881, s. 3 (6), *ante*, p. 191.

I. SALE OF FREEHOLDS OR COPYHOLDS.

letters of administration, and other documents, whether in the vendor's possession or not, and which he may require respectively for whatever purpose the same may be required respectively, and of and incidental to all inquiries, searches, and journeys, incident to any of the purposes aforesaid.

Identity.

10. The purchaser shall admit the identity of the property with that described in the muniments of title upon the evidence afforded by a comparison of the descriptions contained in this agreement and the said muniments and a statutory declaration to be made if required at the purchaser's expense that the property has been enjoyed according to the title shown for —— years and upwards prior to the date hereof].

Errors in description not to annul sale, nor entitle parties to compensation (*i*).

11. The admeasurements and descriptions of the property, as given in the said schedule, are believed and shall be assumed to be correct; but if any misstatement, error, or omission shall be found in such admeasurements or descriptions, the same shall not annul the sale, nor shall any compensation be allowed, either to the vendor or purchaser in respect thereof (*j*). [If the purchaser requires the conveyance of the premises to be in accordance with the plan hereto annexed, he shall only be entitled thereto, provided

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(*i*) This condition can only be relied upon by a vendor seeking to enforce specific performance, as applying to small errors, and will not cover a material deficiency so as to disentitle a purchaser from compensation: *Whittemore* v. *Whittemore,* L. R. 8 Eq. 603; *Jacobs* v. *Revell,* [1900] 2 Ch. 858, where the cases are discussed; *Debenham* v. *Sawbridge,* [1901] 2 Ch. 98; *Re Leyland and Taylor,* [1900] 2 Ch. 625; *Eastwood* v. *Ashton,* [1914] 1 Ch. 68; 83 L. J. Ch. 263. Since the Trustee Act, 1893 (see sect. 14), vendor trustees can sell with a condition excluding compensation. See also as to this condition, Conditions of Sale, *ante,* p. 198, note (*p*). As to whether compensation can be claimed in the absence of express stipulation after completion of the purchase, see *Joliffe* v. *Baker,* 11 Q. B. D. 255; *Palmer* v. *Johnson,* 13 Q. B. D. 351. If compensation is to be allowed, substitute for this clause the following words after the words "shall not annul the sale":—

"but a reasonable compensation, if demanded in writing before completion, shall be allowed or paid by the vendor or purchaser, as the case may be, the amount thereof to be fixed by two referees to be appointed, the one by the vendor and the other by the purchaser, or by their umpire, pursuant to the Arbitration Act, 1889, whose decision shall be final."

(*j*) *Re Terry and White,* 32 Ch. D. at p. 34; *Re Puckett and Smith,* [1902] 2 Ch. 258.

I. SALE OF FREEHOLDS OR COPYHOLDS.

that there be inserted in such conveyance a statement that the verbal description of the premises therein contained shall not be governed, restricted, or enlarged by the said plan in the event of any variance between the description and plan] (*k*).

Completion of purchase and conveyance of the property.

12. Upon payment of the [balance of the] purchase-money [and the amount of such valuation as aforesaid] the vendor and all other necessary parties (if any) will execute a proper conveyance of the premises to the purchaser; such conveyance to be prepared by and at the expense of the purchaser, and the engrossment thereof to be left not less than —— days before the said —— day of ——, for the approval of the solicitors of the vendor at their said office (*l*).

Vendor only to give statutory covenant against incumbrances.

[13. The vendor is selling as trustee [mortgagee under his statutory power of sale (*ll*)], and accordingly shall be required to give only the statutory covenant against incumbrances implied by reason of his being expressed to convey as trustee [mortgagee].]

Vendor to retain muniments of title relating to other property.

14. The vendor shall retain all deeds and other documents which relate as well to other property as to the property agreed to be sold, and shall give to the purchaser a statutory acknowledgment of the right of the purchaser to production of such deeds and documents, and to delivery of copies thereof [and also a statutory undertaking for the safe custody thereof] (*m*).

I. V. D. stamp.

15. The completion of the purchase shall not be delayed on the ground that neither this agreement nor the conveyance is stamped with an increment value denoting stamp in accordance with sect. 4 of the Finance (1909-10) Act, 1910, but in that case the purchaser shall be entitled to and be satisfied with delivery to him on completion of the official form of acknowledgment issued by the

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(*k*) See *Re Sansom and Narbeth*, [1910] 1 Ch. 741; *Re Sparrow and James*, [1910] 2 Ch. 60; and see also 56 Sol. J. 608.

(*l*) Where the property is registered land, or situate in a district where registration is compulsory, see *ante*, p. 200, note (*y*). Where the purchase-money is payable by instalments, for the words "Upon payment of the purchase-money" substitute,

"Upon payment of the said first instalment of the purchase-money."

(*ll*) *Or*, "as the registered proprietor of a charge, with power of sale in exercise of the power conferred by the Conveyancing Act, 1881":

see sect. 9 (2) of the L. T. Act, 1897.

(*m*) Where the vendor is a trustee or mortgagee the words in brackets will be omitted.

I. SALE OF FREEHOLDS OR COPYHOLDS.

Inland Revenue Office, upon production of which such stamp may be procured (*n*).

On default of purchaser to comply with stipulations, vendor may rescind and resell (*o*).

16. If the purchaser shall neglect or fail to comply with the above stipulations, his deposit money shall be forfeited to the vendor, who shall be at liberty to rescind the present sale, and resell the property, either by public auction or private contract, at such time and place, and subject to such conditions as the vendor shall think fit, and the deficiency of price, if any, which shall happen on such resale, and the expenses of and incident to the present sale and such resale shall immediately after such resale be made good and be paid to the vendor by the present purchaser, and in case of non-payment the whole or such part of such deficiency as shall not be paid shall be recoverable by the vendor as liquidated damages. As WITNESS the hands of the parties to these presents.

Witness to the signing of the above named [*vendor*] and [*purchaser*] [*Signature of Witness.*] } [*Sig. of Vendor.*] [*Sig. of Purchaser.*]

II. AGREEMENT *by* TRUSTEES *for the* SALE *of a* LEASEHOLD MESSUAGE, *&c.* APPLICATION *of* INSURANCE MONEYS *in event of* FIRE *before* COMPLETION.

Parties.

THIS AGREEMENT (*p*), made the —— day of ——, 19—, BETWEEN [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the vendors"), of the one part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part; WHEREBY IT IS AGREED and declared as follows:—

Agreement for sale and purchase—Parcels.

1. The vendors shall sell, and the purchaser shall purchase at the price of £——, all that leasehold messuage, &c. [*describe*

(*n*) See Conditions of Sale, *ante*, p. 201, note (*a*).

(*o*) As to this condition, see *Want* v. *Stallibrass*, L. R. 8 Ex. 175; *Daniell* v. *Essex*, L. R. 10 C. P. 538; *Soper* v. *Arnold*, 14 App. Cas. 429; *Jones* v. *Burnell*, (1911) W. N. 153. As to the vendor's right to deposit in the absence of express stipulation, see *Howe* v. *Smith*, 27 Ch. D. 89; *Hall* v. *Burnell*, [1911] 2 Ch. 551; and as to giving credit for the deposit in calculating the deficiency, see *Shuttleworth* v. *Clews*, [1910] 1 Ch. 176; *Griffiths* v. *Vezey*, [1906] 1 Ch. 796; *Dewar* v. *Mintoft*, [1912] 2 K. B. 373. As to the forfeiture of the deposit where a vital defect in the title is discovered, see *Re Scott and Alvarez*, [1895] 2 Ch. 603.

(*p*) Stamp, 6*d*.

parcels], situate in the parish of ——, in the county of ——, and now held by the vendors for the residue of a term of —— years from the —— day of ——, granted by an indenture of lease [underlease], dated the —— day of ——, and expressed to be made between [*lessor*] of the one part, and [*lessee*] of the other part, at the yearly rent of £——, and subject to the lessee's covenants and conditions therein mentioned. [*If necessary, insert provisions as to valuation of fixtures, p.* 246; *and insurance,* ante, *p.* 248.]

Delivery of abstract.

2. The vendors shall within —— days from the date hereof deliver to the solicitor of the purchaser an abstract of their title to the premises commencing with the said lease [underlease]. The production of the receipt for the last payment due for rent under the lease [underlease] shall be deemed conclusive evidence that all the covenants and conditions of the lease [underlease] have been duly performed and observed, or that all breaches (if any) of such covenants and conditions have been waived up to the day of completion of the purchase (*q*).

Production of lease, &c.

3. The lease [underlease] under which the property is held or a copy thereof, and a counterpart or copy of the lease to [agreement with] the tenants, having been already produced to the purchaser's solicitors, the purchaser shall be deemed to purchase with full notice of the contents thereof.

Objections and requisitions (*r*).

4. The purchaser shall within —— days after delivery of the abstract in writing, make and send to the solicitor of the vendors his objections and requisitions (if any) to the title, and shall also within —— days after the delivery of the vendors' replies to the purchaser's objections and requisitions (if any) in writing, make and send to the solicitor of the vendors his further objections and requisitions (if any) arising out of the vendors' replies: And every objection and requisition, or further objection or further requisition, not so made and sent shall be deemed to have been waived, and for this purpose time shall be of the essence of the contract. [The purchaser shall not make any objection or requisi-

(*q*) See as to this the Conveyancing Act, 1881, s. 3 (4) and (5); and see also *ante,* p. 207, note (*l*). As to the risk in purchasing under either the stipulations in the text, or the statutory provisions, see *Patman* v. *Harland,* 17 Ch. D. 353.

(*r*) See *ante,* pp. 198, 199, Form 18 and notes (*r*) and (*t*).

II. SALE OF LEASEHOLDS.

tion on the ground of the non-registration of any deed or other document.]

Vendors entitled to rescind if requisitions insisted on (*s*).

5. In case the purchaser shall make any objection or requisition which the vendors shall be unable or [on the ground of delay, difficulty, or expense, or on any other reasonable ground] unwilling to remove or comply with, the vendors shall be at liberty (notwithstanding any attempt to answer or comply with such objection or requisition, or any previous or pending negotiation or litigation) at any time, on giving the purchaser not less than ten days' notice in writing, to annul the sale, in which case, unless the objection or requisition shall have been in the meantime withdrawn, the sale shall at the expiration of the notice be annulled [and in that event the purchaser shall be entitled to a return of the deposit, but without interest, costs, or compensation].

Vendors to obtain lessor's license to assign.

6. The said lease contains a provision that the lessees shall not assign without license from the lessor. The vendors shall immediately after the execution of this contract apply for and endeavour to obtain such license, and if they shall be unable to obtain the same before the —— day of —— they shall be at liberty to rescind the sale in manner provided by the last preceding clause hereof.

Errors not to annul sale (*t*).

7. The admeasurements and description of the property are believed and shall be assumed to be correct, but if any misstatement, error, or omission shall be found in this agreement the same shall not annul the sale, nor shall any compensation be allowed either to the vendors or purchaser in respect thereof.

Expenses of making copies of deeds, &c., whether in vendors' possession or not, to be borne by purchaser.

8. In addition to all expenses by law made payable by a purchaser (*u*), the purchaser shall bear all expenses of and incidental to making, procuring, verifying, furnishing, producing, and examining all attested, stamped, office, or other copies and abstracts of and extracts from Acts of Parliament, inclosure awards, records, proceedings of Courts, court rolls, deeds, wills, probates, letters of administration, and other documents, whether in the vendors' possession or not, and which he may require respectively for whatever purpose the same may be required

(*s*) See *ante*, p. 199, notes (*u*) and (*x*).
(*t*) See note (*i*), p. 276, *ante*.
(*u*) See Conveyancing Act, 1881, s. 3 (6).

respectively, and of and incidental to all inquiries, searches, and journeys, incident to any of the purposes aforesaid.

Completion of purchase.

9. The purchaser shall on the —— day of —— next, pay the balance of the purchase-money at the office of the solicitors of the vendors at their office at ——, and the purchase shall then and there be completed, and thereupon the vendors and all other necessary parties (if any) will make and execute a proper assignment of the premises to the purchaser. Such assignment shall be prepared by and at the expense of the purchaser, and shall be left not less than —— days before the said —— day of —— for the approval of the vendors' solicitors at the office aforesaid (*x*).

Vendors to give statutory covenant against incumbrances.

10. The vendors who are selling, as trustees, shall be required to give only the statutory covenant against incumbrances implied by reason of their being expressed to convey as trustees, and the concurrence of the persons beneficially interested (except any person whose consent is necessary to the sale) in the assignment of the property shall not be required.

As to custody of deeds, &c.

11. All deeds and documents which relate exclusively to the property hereby agreed to be sold shall be handed over to the purchaser on completion; but such deeds and documents as relate not only to that property, but also to other property, shall be retained by the vendors, who shall enter into the usual statutory acknowledgment for the production of the deeds and documents retained, but shall not be required to enter into any undertaking for the safe custody thereof [*or*, and shall also give a qualified undertaking for the safe custody thereof, whereby their liability shall cease on parting with the actual possession of the said deeds and documents].

Indemnity against rent and covenants.

12. The purchaser shall covenant to pay the rent and perform and observe the covenants of the lease [underlease] under which the property is held, and to indemnify the vendors [and the estate of their testator] from all liability in respect of such rent and covenants. And shall, if required, execute and deliver to the vendors a duplicate assignment to be prepared and stamped by and at the expense of the purchaser.

Application of insurance moneys in

13. If the said messuage and premises, or any part thereof, shall be destroyed or damaged by fire before the completion of

(*x*) Where the property is registered under the L. T. Acts or is in a district where registration is compulsory, see *ante*, p. 200, note (*y*).

II. SALE OF LEASEHOLDS. — event of fire before completion (*y*).

the purchase, all moneys which shall be received by the vendors under the existing insurance of the premises shall be applied in or towards reinstating the same, or shall be paid to the purchaser, as he shall require.

Receipt of rents and discharge of outgoings (*yy*).

14. The rents [*or*, possession] of the premises shall be received [*or*, retained], and all rates, taxes, and outgoings, payable for or in respect thereof, shall be paid by the vendors up to the said —— day of ——, and as from that date the rents [possession] shall be taken by the purchaser, who shall thenceforth pay all the rents, taxes, and outgoings; And such rates, taxes, and outgoings shall, if necessary, for the purpose of this stipulation be apportioned, but the purchaser shall not be let into actual possession of the premises until completion of the purchase.

15. [*Insert clause as to increment value duty stamp, see* ante, *p.* 277.]

If purchase not completed on day appointed, purchaser to pay interest.

16. If from any cause whatever the purchase shall not be completed before the said —— day of ——, the purchaser shall as from that day pay interest for the said purchase-money to the vendors, after the rate of £—— per cent. per annum, until completion of the purchase.

As WITNESS the hands of the parties to these presents.

Signed by the above named [*vendors*] and [*purchaser*] in the presence of [*Signature of Witness.*] } [*Sig. of Vendors.*] [*Sig. of Purchaser.*]

(*y*) A contract for sale of a house contained no reference to an existing insurance: after the date of the contract, but before completion, the house was damaged by fire; it was held that the purchaser was not entitled as against the vendor to the benefit of the insurance: *Rayner* v. *Preston* (C. A.), 18 Ch. D. 1.

(*yy*) See *ante*, p. 194, note (*e*).

III. CONTRACT *by a* TENANT *for* LIFE *or other* LIMITED OWNER *under the Settled Land Act*, 1882, *for the* SALE *of the principal* MANSION HOUSE, *and* DEMESNE LANDS *on a* SETTLED ESTATE *and* MANORS, *an* ADVOWSON, *and* LANDS *of* FREEHOLD, COPYHOLD, *and* LEASEHOLD TENURE; *the* TIMBER *to be* SOLD *at a* VALUATION.

III. SALE OF MANSION HOUSE, MANORS, &C. BY TENANT FOR LIFE.

THIS AGREEMENT (*z*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*] of, &c. (hereinafter called "the purchaser"), of the other part. Parties.

1. The vendor, who is selling as tenant for life in possession [a person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890], under a settlement made by the will dated the —— day of ——, 19—, and proved in the Principal Probate Registry of the High Court of Justice on the —— day of ——, of [*testator*], late of, &c., deceased [under an indenture of settlement dated the —— day of ——, and made between, &c.], and under the powers of the Settled Land Acts, 1882 to 1890, hereby [subject to the consent of the trustees (*a*) of the said settlement, or the approval of the Court being obtained as hereinafter mentioned] agrees to sell, and the purchaser agrees to purchase, for the price of £—— (to be paid in manner hereinafter mentioned), [ALL THAT the mansion house known as —— Hall, situate in the parish of ——, in the county of ——, with the stables, outbuildings, gardens, pleasure grounds, park, and demesne lands thereto belonging, and usually held therewith; AND ALSO] all and singular the messuages, farms, lands, and hereditaments, containing by admeasurement altogether —— acres or thereabouts, and situate in the parishes of W., X., Y., and Z. respectively, and in the county of —— aforesaid, and all which hereinbefore mentioned premises are particularly described in the Sale and purchase. Parcels.

(*z*) Stamp, 6*d*.

(*a*) See S. L. Act, 1882, s. 2 (8), and S. L. Act, 1890, s. 16, as to who are trustees for the purpose of the S. L. Acts; and generally as to sales under the S. L. Acts, see *post*, Conveyances, Preliminary Note, *post*, p. 309. The consent of the trustees or an order of the Court is necessary for the sale of the principal mansion house: see S. L. A. 1890, s. 10. As to what is the principal mansion house, see *Gilbey* v. *Rush*, [1906] 1 Ch. 11; *Re Wythes' S. E.*, [1908] 1 Ch. 593.

III. SALE OF MANSION HOUSE, MANORS, &C. BY TENANT FOR LIFE.

schedule hereto and delineated in the plan hereto annexed; AND ALSO all those the two several manors or lordships, or reputed manors or lordships of X. and Y., in the county of —— aforesaid, with their respective rights, members, and appurtenances; AND ALSO all that the advowson and right of patronage and presentation of and to the rectory of —— aforesaid.

Particulars as to tenure, &c.

2. The bulk of the property is of freehold tenure, but subject as to part thereof to a fee farm rent of £—— per annum payable to the lord of the manor of Z.; —— acres or thereabouts are of copyhold tenure, and are held of the manor of Z. aforesaid, at quit rents amounting altogether to £—— per annum, and are also liable to fines and heriots; and the remainder of the property, comprising —— acres or thereabouts, is of leasehold tenure, and held for the unexpired residue of a term of —— years from the —— day of ——, 19—, granted by an indenture of lease dated the —— day of ——, 19—, and expressed to be made between [*parties*] at the yearly rent of £——, and subject to the lessee's covenants and conditions therein contained. Subject and except as herein is mentioned the property will be sold free from incumbrances.

Fixtures, timber, crops, &c. to be taken at a valuation.

3. The tenant's fixtures in and about the mansion house, and all iron hurdles and iron fencing, and all the timber and timber-like trees, tellers, pollards, and saplings, down to the value of one shilling per stick, and the underwoods and plantations down to the stem (except the shrubs, plants, and fruit, and other trees in the flower garden and kitchen gardens adjoining the mansion house), and all agricultural machinery and implements, and the growing crops, dung, and compost, and all acts of husbandry and all rights usually appraised by the custom of the country as between an incoming and outgoing tenant shall be paid for by the purchaser at the time fixed for the completion of the sale at a valuation to be made by two referees, one to be nominated by the vendor and the other by the purchaser, or by an umpire to be appointed by such referees before proceeding to a valuation; but if either the vendor or purchaser shall refuse or neglect to nominate a valuer, and to notify such nomination in writing to the other of them, before the —— day of —— next, or if the valuer nominated by either party shall refuse or neglect to act, then the decision and valuation shall be made by the referee (if duly notified as aforesaid) of the other party alone.

4. The purchaser shall allow the vendor to have the use, until the - - day of —— next, of the barns, dressing rooms, stack-yards and farm buildings, on the home farm. Vendor to have use of barns.

5. Upon or immediately after the execution of this contract the purchaser shall pay by way of deposit into the bank of Messrs. ——, to the credit of the account of [*trustee*], of, &c., and [*trustee*], of, &c., the present trustees of the said will [said indenture of settlement], the sum of £— —, and a receipt for the same, signed by the said trustees, shall upon such payment be handed over to the purchaser by the said bankers; And the purchaser shall pay the balance of the purchase-money at the time and in manner hereinafter mentioned. Payment of deposit (*b*).

6. Within - - days from the date of these presents the vendor, if required, shall deliver to the purchaser or his solicitor an abstract of the title of the vendor to the property sold, subject to the following stipulations: As to the greater part of the property being of freehold tenure, and comprising the mansion house and its appurtenances, and the demesne lands, and the farms, cottages, lands, advowson, and hereditaments particularly described in the first part of the said schedule hereto, the title shall commence with a conveyance on sale, dated the - - - day of —: And as to the other part of the property, also being of freehold tenure, com- Delivery of abstract. Commencement of title (*c*).

(*b*) Unless the purchase-money is, by direction of the tenant for life, paid into Court, it must be paid to the trustees of the settlement to be invested or applied by them as capital money arising under the Act; the payment must not be made to "fewer than two persons as trustees of the settlement, unless the settlement authorises the receipt of *capital* trust-money of the settlement by one trustee" (S. L. A. 1882, s. 39); and the receipt of the trustees, or of one trustee, if empowered to act, or of the personal representatives or representative of the last surviving or continuing trustee, is the only proper discharge to the purchaser for the payment of the purchase-money or any part thereof (sect. 40), except in the case of payment into Court, which effectually exonerates the person paying in the money (sect. 46 (2)). But see, as to the Public Trustee when appointed sole trustee, *Re Leslie's Hassop Estates*, [1911] 1 Ch. 611. Payment of purchase-money under Settled Land Act, 1882.

(*c*) For other stipulations as to title, evidence of title, &c., see *tit.* "Conditions of Sale." The advowson must be specifically mentioned in some part of the schedule, otherwise the title would have to be carried back for one hundred years: see Dart, 7th ed. 329. The title after 1898 must show the dates of the "institutions" and "admissions." As to the sale of advowsons and next presentations, see the Benefices Act, 1898.

III. SALE OF MANSION HOUSE, MANORS, &C. BY TENANT FOR LIFE.

prising the several farms, cottages, lands, and hereditaments particularly described in the second part of the same schedule, the title shall commence with a general demise of real estate contained in the will of [*testator*], of, &c., deceased, who died, &c., and the purchaser shall assume without proof that the said [*testator*] was seised or otherwise entitled in fee simple, free from incumbrances, of or to the last mentioned premises: And as to other part of the property, being the copyhold portion thereof, and containing —— acres or thereabouts, and comprising the several closes of land and hereditaments particularly described in the third part of the same schedule, the title shall commence with an admittance dated, &c.: And as to the leasehold portion of the property, comprising the messuages and lands thereto adjoining, particularly described in the fourth part of the said schedule, the title shall commence with the hereinbefore mentioned indenture of lease: And as to the residue of the property, comprising several detached cottages, closes of land, and hereditaments, containing altogether —— acres or thereabouts, and particularly described in the fifth part of the said schedule (and which last mentioned premises were purchased by the vendor, or by the trustees of the said settlement, at his request from time to time since the year 19—), the purchaser shall be satisfied with such titles as the vendor himself or the said trustees accepted on the occasion of the respective purchases. The said lease and counterparts of the leases or written agreements with the tenants have been already produced to the purchaser's solicitors, and the purchaser shall be deemed to purchase with full notice of the contents thereof respectively, and of the terms of the tenancies, and of the rights affecting the property, notwithstanding any incomplete or inaccurate statement thereof herein. The production of the receipt for the last payment due for rent under the hereinbefore mentioned indenture of lease, shall be deemed conclusive evidence that all the covenants and conditions thereof have been duly performed and observed, or that all breaches (if any) of such covenants and conditions have been waived up to the day of completion of the purchase.

7. [*Reservation of mines and minerals, &c., see Special Conditions, IX.*, ante, *p.* 249] (*d*).

(*d*) As to reservation of mines, &c., see S. L. A. 1882, ss. 2 (10) (iv.), 4 (6), and 17.

III. SALE OF MANSION HOUSE, MANORS, &C. BY TENANT FOR LIFE.

8. The sale is made subject to the said fee farm rent of £——, and to the quit and other rents, heriots, fines and services, and covenants hereinbefore mentioned or referred to respectively, and all rights of the lord of the said manor of Z., and to all subsisting rights of way and water, and other easements affecting the premises. Sale made subject to fee farm rent and manorial rights, &c.

9. No requisition or inquiry shall be made as to the creation or origin of the said fee farm rent, or of any of the said quit and other rents, fines, and heriots. As to creation of rents, &c.

10. The vendor shall not be required to distinguish the precise limits or boundaries of the said manors hereby agreed to be sold respectively, or of the several lands held under different titles as aforesaid, or to furnish any evidence or information not in his possession as to the existence or nature of any manorial rights or franchises, or otherwise, as to the said manor, or as to the identity of the property sold with that described in the muniments of title. As to evidence of identity.

11. The purchaser shall assume that all notices required by the Settled Land Act, 1882, have been duly given, and shall not make any objection or requisition with respect to such notices.

12. [*Delivery of objections and requisitions*, ante, *p.* 275, *Form* 7.] As to requisitions.

13. [*If requisitions are insisted on, vendor may rescind*, ante, *p.* 275, *Form* 8.]

14. The purchaser shall on or before the —— day of ——, pay either to the trustees at the office of their said solicitors at ——, or at the option of the vendor, to be signified in writing to the purchaser within one week after the title is accepted into Court, the balance of the purchase-money, and the amount of the valuation aforesaid (*e*), and the purchase shall then and there be completed; the vendor and all other necessary parties shall thereupon execute a proper conveyance of the property to the purchaser. Completion of purchase.

(*e*) Where the deposit is paid to a deposit account in the joint names of the vendor and purchaser, add,

"And at the same time the deposit shall be withdrawn from the said bank and paid over to the said trustees or into Court, as the case may be, but all interest which shall have accrued thereon up to that date shall be paid to the purchaser."

III. SALE OF MANSION HOUSE, MANORS, &C. BY TENANT FOR LIFE.

Such conveyance to be prepared by and at the expense of the purchaser, and to be left by him for the approval of the vendor's solicitors at their office aforesaid not less than —— days before the said —— day of ——.

As to covenants for title by vendor and concurrence of trustees.

15. As the vendor is selling as tenant for life [*or*, "limited owner"] under the powers of the Settled Land Act, 1882, his covenants for title and further assurance, whether expressed or implied, shall, as regards the reversion or remainder expectant on the determination of his [life] estate, be limited so as not to extend to the acts or defaults of any person other than himself and persons deriving title under him or them. The trustees of the said indenture of settlement will concur in the conveyance, but only for the purpose of testifying their consent to the sale hereby contracted to be made [and acknowledging the receipt of the purchase-money, and of the amount of the said valuation], and their concurrence shall not be required for any other purpose.

16. [*Purchaser to have possession on day fixed for completion*, ante, *p.* 282, *Form* 14.]

17. [*If purchase not completed on day fixed, purchaser to pay interest for the purchase-money "and the amount of the valuation aforesaid,"* ante, *p.* 282, *Form* 16.]

18. [*Expenses*, ante, *p.* 280, *Form* 8.]

19. [*Errors and misdescription*, ante, *p.* 254, *Form* 1, 2 or 3, *substituting* "this agreement" *for* "the particulars or these conditions"] (*f*).

20. [*Muniments, retention of*, ante, *p.* 277, *Form* 14.]

21. [*Increment value duty stamp*, ante, *p.* 277, *Form* 15.]

Consent of trustees or order of Court (*g*).

22. The vendor shall on or before the —— day of ——, at his own cost, or that of the settled estate, apply for and endeavour to obtain the consent of the said trustees to or an order of the Court approving the sale, and if such order or consent shall not be obtained on or before the —— day of ——, or such later day as the vendor and the purchaser shall agree [or if the sale cannot for any reason arising from the state of the title be carried into effect under the

(*f*) See *ante*, p. 198, note (*p*), and p. 276, note (*i*).

(*g*) This provision will be required where such consent or order is necessary, *e.g.*, on a sale of the principal mansion house.

statutory or other powers of the vendor or his trustees], then the sale shall be void, and the deposit shall be returned to the purchaser, but without any interest, costs, or compensation. III. SALE OF MANSION HOUSE, MANORS, &C. BY TENANT FOR LIFE.

23. [*On default of purchaser to complete the deposit shall be forfeited, and vendor may rescind the contract and resell the property*, ante, *p.* 278, *Form* 16.]

In witness, &c.

The Schedule above referred to.

IV. PROVISIONAL AGREEMENT *by a* Tenant *for* Life *under the Settled Land Act*, 1882, *for the* Sale *of* Heirlooms (*h*).

THIS AGREEMENT (*i*), made the —— day of ——, 19—, Between [*tenant for life*], of —— Hall, in the county of —— (herein called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: Whereas under or by virtue of an indenture of settlement dated the —— day of ——, and expressed to be made between [*parties*], the vendor is now entitled as tenant for life in possession to the settled lands thereby devised, and to certain personal chattels, including the chattels and articles specified in the schedule hereto, settled on trusts so as to devolve with the said settled lands until a tenant in tail by purchase should attain the age of twenty-one

Parties.

Recitals: of settlement;

(*h*) By sect. 37 of the Settled Land Act, 1882, it is enacted that— Heirlooms.

"(1) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

"(2) The money arising by the sale shall be capital money arising under this Act," &c.

"(3) A sale or purchase of chattels under this section shall not be made without an order of the Court."

The tenant for life must show that the sale is in the interests of all parties: *Re Hope*, [1899] 2 Ch. 679. See, as to this section, and the cases in which sales of heirlooms have been ordered or refused, Wolstenholme, 10th ed. p. 436.

(*i*) Stamp, 6*d*.

IV. OF HEIRLOOMS BY TENANT FOR LIFE.

years; AND WHEREAS by an order dated the —— day of ——, 19—, of the Chancery Division of the High Court of Justice, in the matter of, &c., upon the application of the vendor, [*trustee*], of, &c., and [*trustee*], of, &c., were appointed trustees under the said will for the purposes of the Settled Land Acts, 1882 to 1890:

of appointment of trustees;

of notice to trustees.

AND WHEREAS on the —— day of ——, 19—, the vendor duly gave notice of his intention to sell the said chattels and premises specified in the schedule hereto to each of the said trustees and also to their solicitors, as required by sect. 45 of the Settled Land Act, 1882. NOW THESE PRESENTS WITNESS, and it is hereby agreed by and between the parties hereto as follows:—

Agreement for sale.

1. Subject to the sanction of the High Court of Justice being obtained as hereinafter mentioned, the vendor shall sell, and the purchaser shall purchase for the sum of £——, the jewels, plate, pictures, statues, and other works of art, books, furniture, and other chattels and articles specified in the schedule hereto.

Payment of deposit.

2. Immediately upon the execution of these presents, the purchaser shall pay by way of deposit into the bank of Messrs. ——, to the credit of [*stakeholder*], of, &c., and [*stakeholder*], of, &c., as stakeholders, but at the risk of the purchaser, the sum of £——.

Completion of the purchase.

3. The purchase shall be completed on the —— day of —— next, at the office at —— of Messrs. ——, the vendor's solicitors, on or before which day the sum so paid by way of deposit as aforesaid, together with the balance of the said purchase-money, shall be paid to the said [*trustees*], or at the option of the vendor, to be signified in writing to the purchaser within one month after the title is accepted, into Court.

Purchaser to pay interest till payment

4. If the purchaser shall not, on or before the said —— day of ——, pay the balance of the purchase-money in accordance with the stipulation hereinbefore contained, he shall pay interest for the same at the rate of 5*l.* per cent. from that date until actual payment thereof: PROVIDED ALWAYS that the purchaser shall not be bound to pay the balance of the purchase-money, or any interest for the same, unless an order of the Court as hereinafter is mentioned shall have been obtained on or before the —— day of ——, 19—.

Delivery of heirlooms to purchaser.

5. Upon production of the receipts for the payment of the deposit and balance of the purchase-money respectively, the said chattels and premises, specified in the schedule hereto, shall be delivered over to the purchaser, or to any person or persons

authorised by him in writing to receive the same at —— Hall aforesaid, and shall be removed therefrom by him or them at his or their own risk. IV. OF HEIRLOOMS BY TENANT FOR LIFE.

6. The vendor shall not be required to furnish any evidence of his title to the premises, other than and except the said indenture of settlement, and the schedule, or inventory of the chattels held as heirlooms under the trusts of the same settlement. The said indenture of settlement and inventory may be inspected by the purchaser, or his solicitor, at the office of Messrs. ——, the vendor's solicitors, but the purchaser shall not be entitled to make or be furnished with any copy or abstract of the said indenture of settlement and inventory respectively. Title.

7. The purchaser shall assume that all notices required by the Settled Land Act, 1882, have been duly given, and shall not make any objection or requisition with respect to such notices.

8. The vendor will, at the expense of himself, or of the settled estate, forthwith apply for and endeavour to obtain an order of the Court sanctioning the sale hereby agreed to be made of the said chattels and premises; AND unless such order shall have been obtained before the —— day of ——, 19—, this agreement shall be void, and thereupon the said deposit, with all interest actually accrued thereon, but without any further or other interest, costs, or compensation whatsoever, shall be paid to the purchaser. Vendor to apply for order of Court.

9. If the purchaser shall neglect or fail to comply with the above stipulations, the vendor shall be at liberty to rescind the present sale, and resell the property, either by public auction or private contract, at such time and place, and subject to such conditions as the vendor shall think fit, and the deficiency of price, if any, which shall happen on such resale, and the expenses of and incident to the present sale and such resale, shall immediately after such resale be made good and be paid to the vendor by the present purchaser, and in case of non-payment the whole or such part of such deficiency as shall not be paid shall be recoverable by the vendor as liquidated damages. On default of purchaser to comply with stipulations, vendor may rescind and resell.

[10. The contract hereby expressed and intended to be made shall not become absolutely binding upon the vendor until the expiration of one calendar month from the —— day of ——, Contract not to be absolutely binding till expiration of period of notice (*k*).

(*k*) This clause will only be necessary when notice was given to the trustees or their solicitors less than one month before the date of the

IV. OF HEIR-LOOMS BY TENANT FOR LIFE.

without any proceedings being taken to prevent the sale hereby contracted to be made.]

As witness, &c.

The Schedule above referred to.

V. AGREEMENT *for the* Sale *of a* Leasehold Shop, Fixtures, Stock-in-Trade, *and* Goodwill *of a* Business. Purchase-money *to be* Paid *by* Instalments. Unpaid Instalments *to be* Secured *by* Purchaser's Bond *and by* Mortgage *of the* Premises *and* Fixtures, *&c.*

Parties.

AN AGREEMENT (*l*), made the —— day of ——, 19—, Between [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Recital of lease of premises.

Whereas the vendor has for some time past carried on the trade or business of a ——, in the city of ——, at a shop [*or*, manufactory] to which the vendor is entitled for the remainder of a term of —— years therein granted to him by a lease dated the —— day of ——, and expressed to be made between [*lessor*] of the one part and the vendor of the other part.

Witnesseth.

NOW THESE PRESENTS WITNESS, and it is hereby agreed and declared by and between the parties hereto as follows:—

Agreement for sale and purchase of shop and goodwill at fixed price;

1. The vendor shall sell and the purchaser shall purchase All that the shop [*or*, manufactory] aforesaid, with the appurtenances, for the residue now to come of the said term, and at the yearly rent of £- - - reserved by the said lease, and subject to the lessees' covenants and conditions therein contained, Together with the goodwill (*m*) of the said trade or business, including the right to use the vendor's name in connection therewith, and to represent

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contract (S. L. A. 1882, s. 45) and such notice has not been accepted by them (S. L. A. 1884, s. 5 (3)).

(*l*) Stamp, 6*d*.

(*m*) In this precedent the intention is that the vendor shall not in any way compete with the purchaser: see clause 11. Where the vendor is to be at liberty to carry on a similar business in the neighbourhood, a special clause enabling him to do so should be inserted in the contract: see *Johnson* v. *Helleby*, 34 L. J. Ch. 179.

the purchaser as carrying on the business as the successor of the vendor (*mm*), for the sum of £——, payable as is hereinafter mentioned: And also all the implements, utensils, and fixtures in and upon the said shop [*or*, manufactory] and used and employed in the said trade or business of a ——; And all the stock-in-trade and book and other debts belonging and owing to the vendor respectively on the —— day of —— next, and the benefit of all then existing contracts and engagements relating to the said trade or business for a sum to be determined by valuation in manner hereinafter mentioned (*n*).

V. OF SHOP AND GOODWILL, &C.

of fixtures, stock-in-trade, &c. at a price to be settled by valuation.

2. The said valuation shall be made at the joint expense of the vendor and purchaser on or before the —— day of —— next by [*referee*], of, &c., on behalf of the vendor, and by [*referee*], of, &c., on behalf of the purchaser (*n*); And in case they shall not agree in their valuation, then by such umpire as the said referees shall, before proceeding to their reference, for that purpose appoint; And the decision of the said referees or of the said umpire, as the case may be, shall be final.

Valuation, how to be taken.

3. The purchaser shall pay a deposit of £——, upon the execution of this agreement. The remainder of the purchase-money shall be paid in manner hereinafter mentioned.

Payment of deposit.

4. [*Delivery of abstract of title to the* "leasehold" *premises*, ante, *p.* 279, *substituting* "vendor" *for* "vendors."]

5. [*Production of lease*, ante, *p.* 279.]

6. [*Objections and requisitions on title*, ante, *p.* 279, *adding clause* 5, *p.* 280, *substituting as above*.]

7. [*Errors in description*, ante, *p.* 280, *substituting as above*.]

8. [*Expenses*, ante, *p.* 280, *substituting as above*.]

9. The purchaser shall pay the remainder of the purchase-money, including the sum which shall be determined by valuation as aforesaid, by the instalments and in manner following (that is to say), the first instalment of £—— on the —— day of —— next, on which day the purchase shall be completed; a second instalment of £—— on the —— day of ——, 19—; a third instal-

Payment of purchase and valuation-money by instalments.

(*mm*) See *Thorneloe* v. *Hill*, [1894] 1 Ch. 569.

(*n*) If preferred, say,

"by a valuation to be made by Messrs. ——, of, &c., or failing such valuation, at their fair value,"

and omit the next clause.

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ment of £—— on the —— day of ——, 19—, and the last instalment, being the balance remaining due after the payment of the said deposit and these instalments respectively, on the —— day of ——, 19—. And the instalments for the time being remaining unpaid shall bear interest at the rate of 5 per cent. per annum, as from the said —— day of —— next, and the interest accrued due up to the day of payment of each instalment shall be paid therewith.

Assignment to be executed;

10. On receiving from the purchaser the said first instalment on the said —— day of —— next as aforesaid, the vendor will execute a proper assignment of the premises to the purchaser, such assignment to be prepared by and at the expense of the purchaser, and to be left not less than —— days before the completion of the purchase, for the approval of the solicitors of the vendor, at their office in —— Street, in the City of —— aforesaid.

to contain covenants by vendor not to carry on same business, &c.;

11. The said assignment shall contain covenants by the vendor to recommend the purchaser to all the late or present customers of the vendor; and not to trade or deal in the said trade or business of a —— directly or indirectly, alone or in partnership with, or as assistant to, any person or persons whomsoever in —— aforesaid, or within —— miles thereof, for the space of seven years from the said —— day of —— next.

to contain covenants by purchaser for payment of instalments, &c.

12. The said assignment shall contain covenants by the purchaser for the payment of the rent and observance and performance of the lessees' covenants and conditions under the said lease, and to indemnify the vendor in respect thereof, and also for payment of the said instalments, and of the interest thereon after the rate aforesaid, on the days hereinbefore appointed for payment thereof respectively; AND ALSO a proviso that if any instalment or interest, or any part thereof respectively, shall be in arrear and unpaid after thirty days from the days hereinbefore appointed for payment thereof respectively, then the whole of the purchase-money (including the amount of such valuation as aforesaid), or the instalments thereof, for the time being remaining unpaid, shall immediately become payable with interest thereon after the rate aforesaid up to the day of payment.

Purchaser to give bond,

13. The purchaser, together with some other person to be approved of by the vendor, shall on the said —— day of —— next, execute to the vendor a bond in the penalty of £——, for

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the payment to him of the instalments of the purchase-money (including the amount of such valuation as aforesaid), which shall then remain unpaid, with interest after the rate and payable at the times aforesaid. And the purchaser, if and whenever required by the vendor in writing so to do, shall execute a proper and valid mortgage to the vendor of the premises comprised in the said lease [and also of the implements, utensils, fixtures, stock-in-trade, and effects of the said business], as a further security for the payment of the instalments then remaining unpaid and interest thereon, payable after the rate and at the times hereinbefore mentioned respectively. Such mortgage shall contain all such powers and provisions as may be reasonably required by the vendor [and shall be duly registered as a bill of sale under the Bills of Sale Act (1878) Amendment Act, 1882, or any other statute for the time being in force for regulating such registration].

and execute mortgage, if required.

14. The business shall be carried on by the vendor for his own benefit and at his own risk and cost up to the said —— day of —— next, and as from that date until actual completion for the benefit and at the risk and cost of the purchaser; but the vendor shall retain possession of the premises and the right to the control and management of the business until completion.

Continuance of business until completion.

15. All profits of the said business and premises up to the said —— day of —— next (except moneys then previously received on account of stock to be taken by the purchaser, which shall be allowed for in the said valuation), and all outgoings in respect thereof up to the same date (including ascertained liabilities previously incurred, but not discharged) shall belong to or be discharged by the vendor; And as from that date the profits shall belong to and all outgoings and losses (including liabilities in respect of uncompleted contracts or engagements) shall be discharged by the purchaser; And such profits and outgoings shall, if necessary, be apportioned for the purposes hereof.

Provision as to profits and outgoings.

16. [*Increment value duty stamp on assignment of leaseholds*, ante, *p.* 208, *Form* 15.]

As witness, &c.

VI. TERMS FOR PURCHASE OF LAND BY RAILWAY COMPANY.

VI. TERMS *for the* PURCHASE *of* LAND *by a* RAILWAY COMPANY.

MEMORANDUM of terms for the purchase of land by the —— Railway Company.

County of ——. Parish of ——.

Number on plan of land agreed to be purchased: ——.

Admeasurement: —— acres, —— roods, —— perches.

Name and address of vendor: ——, of, &c.

Purchase to comprise the fee simple in the land and the mines and minerals in and under the same.

Purchase-money to include compensation for mines and minerals, severance, accommodation works, and all damage by execution of works, and all rights of pre-emption over surplus lands, agreed at £——.

Company to have possession on the —— of ——, 19—.

Rents and profits to be taken, and outgoings paid by the vendor up to the —— of ——, 19—, and thereafter by the company.

Costs to be paid by the company under the Act.

Surveyor's fees agreed at £——.

Formal agreement to be prepared by the company's solicitors.

[*Signature of Vendor.*]
[*Signature of* A. B.],
Agent for the Company.

Dated the —— day of ——, 19—.

VII. AGREEMENT *for the* SALE *of* LAND, *with* MINES, *&c., to a* RAILWAY COMPANY (*o*). PURCHASE-MONEY *to include* COMPENSATION *for* SEVERANCE, *&c., and* SATISFACTION *for* ACCOMMODATION WORKS. COMPANY *to have* IMMEDIATE POSSESSION.

Parties.

AN AGREEMENT (*p*), made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called "the vendor"), of

(*o*) See the provisions of the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), amended by the Lands C. C. Act Amendment Act, 1860, the Lands C. C. Act, 1869, and the Lands Clauses (Umpire) Act, 1883; and see also sect. 45 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20).

(*p*) Stamp, 6*d*.

VII. SALE OF LAND TO RAILWAY COMPANY.

the one part, and the —— Railway Company (hereinafter called "the company"), of the other part; WHEREBY IT IS AGREED as follows, that is to say:—

Agreement for sale and purchase.

1. Under or by virtue of the powers, and subject to the provisions of the —— Railway Act, 19—, and of the public Acts incorporated therewith, the vendor, on behalf of himself and all persons whomsoever having any estate or interest in the hereditaments hereinafter mentioned, shall sell, and the company shall purchase for the purposes of the railway and works by the said —— Railway Act, 19—, authorised to be made and constructed, and other the works connected therewith, at the price of £——, ALL THOSE closes of land and hereditaments situate in the parish of ——, in the county of ——, and which premises are particularly described with their respective admeasurements in the schedule hereto, and are also delineated and numbered —— on the plans (*q*), and described in the book of reference thereto relating to the said railway, deposited by the company in the office of the clerk of the peace for the county of ——, at ——; TOGETHER with all mines and minerals (*r*) in and under the same premises, and the inheritance thereof in fee simple, free from incumbrances.

Purchase-money to include compensation for mines, severance, &c.

2. The said price of £—— shall include, and be in full satisfaction of and compensation for all mines and minerals, and for all damage caused by severing the lands and premises purchased from other property of the vendor, or by otherwise injuriously

(*q*) See Railway C. C. Act, 1845, s. 8.

(*r*) See Railway C. C. Act, 1845, ss. 77—85. If the company are unwilling to purchase, the owner may work the mines (sect. 79). It is generally advisable that the company should purchase the mines along with the surface, whereby the necessity of paying compensation, under sect. 78, for leaving the mines unworked, and under sect. 81, for severance, &c., is avoided. As to the vendor's right to work the minerals if not purchased by the company, see *Pountney* v. *Clayton*, 11 Q. B. D. 820; *Midland Rly. Co.* v. *Robinson*, 15 App. Cas. 19. The term "mines" in a conveyance to a canal company was held to include quarries: *Midland Rail. Co.* v. *Checkley*, L. R. 4 Eq. 19; see also *Hext* v. *Gill*, L. R. 7 Ch. 699. As to what are minerals, see the following cases: as to "clay," see *G. W. Rly. Co.* v. *Blades*, [1901] 2 Ch. 624; *Re Todd*, [1903] 1 K. B. 603; "china clay," *G. W. Rly. Co.* v. *Carpalla, &c. Co.*, [1910] A. C. 83; "sandstone," *North British Rly. Co.* v. *Budhill Coal & Sandstone Co.*, [1910] A. C. 116; "fire-clay," *Caledonian Rly.* v. *Glenboig, &c. Co.*, [1911] A. C. 290; "freestone," *Symington* v. *Caledonian Rly. Co.*, [1912] A. C. 87.

Purchase by railway company under R. C. C. Act.

VII. SALE OF LAND TO RAILWAY COMPANY.

affecting such other property in the exercise of the powers of the said Acts, and in full satisfaction of all communications, bridges, culverts, drains, ways, passages, accommodation works (*s*) and things whatsoever which might otherwise be required to be made or done under any of the said Acts for the better enjoyment, protection, or accommodation of the vendor's adjoining or other property, and also all rights of pre-emption over surplus lands.

Also for tenant's rights, &c.

3. The said price of £—— shall also include and be in full satisfaction of and compensation for all claims and demands whatsoever of the tenants or occupiers of the premises hereby agreed to be sold; PROVIDED ALWAYS that the company shall give due notice to such tenants and occupiers to treat as provided by the said Acts, and shall deliver to the vendor all claims and demands sent in pursuant to the said notices, and the vendor shall be at liberty to settle with the said tenants and occupiers, upon such terms as may be mutually agreed between him and them with regard to their respective interests in the premises, and he shall indemnify the company from all claims and demands in respect of the premises.

Alteration of levels.

4. The vendor hereby consents to such alterations of levels as may be found necessary or convenient in the construction of the said railway and works.

Delivery of abstract.

5. The vendor shall, whenever thereunto required by the solicitors of the company in writing, deliver to them an abstract of title to the premises hereby agreed to be sold; but such abstract shall not commence at an earlier date than shall be required by them, and no costs or expenses shall be incurred by the vendor in preparing the abstract or otherwise as to title, except upon the written request in that behalf of the said solicitors or of the secretary of the company. [*If necessary, add provisions as to title, evidence of title, identity, or other matter, as in Precedent I.*, ante, *p.* 275.]

Errors, &c.

6. If any error or omission shall be found as regards the admeasurements or descriptions of the premises, compensation on account thereof shall be paid or allowed by the vendor or the company, as the case may require [*or*, no compensation on account thereof shall be paid or allowed by or to the vendor or the company].

(*s*) As to accommodation works, see Railway C. C. Act, 1845, ss. 68—76.

Completion of purchase.

7. The purchase-money, together with all costs and expenses allowed by the said Acts or by this agreement, shall be paid to the vendor at the office of Messrs. ——, his solicitors, at ——, on the —— day of ——, provided a good title to the premises shall then have been shown. The vendor and all other necessary parties, if any, shall thereupon make and execute a proper conveyance of the premises to the company (*t*), such conveyance to contain the usual statutory acknowledgment by the vendor of the right of the company to production of all documents relating to the premises agreed to be sold and retained by the vendor, and [but not an] undertaking for the safe custody thereof.

Delivery of possession to the company.

8. The vendor shall up to the said —— day of ——, retain possession of the premises or receive the rents and profits thereof, and shall pay all taxes, rates, and outgoings in respect thereof; and as from that day the possession shall be taken and the rents and profits shall be received and all taxes, rates, and outgoings shall be paid by the company.

Power for company to take immediate possession.

9. PROVIDED ALWAYS that the company shall be at liberty to take immediate possession of the premises upon depositing the said price or sum of £——, in the —— Bank in the joint names of the vendor and of C. D. on behalf of the company, where the same sum shall remain at the risk of the company until completion of the purchase, when the same shall be paid to the vendor or other persons entitled thereto, or otherwise into Court for his or their benefit as provided by the said Acts.

In such case company to pay interest on purchase-money.

10. If the company shall take immediate possession under the last preceding clause, the company shall pay interest on the purchase-money at the rate of £—— per cent. per annum on the amount of the purchase-money from the time of taking such possession until completion of the purchase, but shall be entitled to receive all interest allowed by the said bank upon the deposit of the purchase-money.

I. V. D. stamp.

11. [*Insert provision as to increment value duty stamp. See* ante, *p.* 277.]

Apportionment of land tax, &c.

[11A. The land tax and tithe rentcharge shall be apportioned (if necessary) at the expense of the company.]

(*t*) As to the company being bound to take a conveyance, see *Re Cary-Elwes*, [1906] 2 Ch. 143.

VII. SALE OF LAND TO RAILWAY COMPANY.

[12. The vendor shall release to the company any right of pre-emption to which he may be entitled under the Lands Clauses Consolidation Act, 1845.]

Right of pre-emption, release of (*u*).

Right of pre-emption, reservation of (*u*).

[12A. The purchaser's right of pre-emption under the Lands Clauses Consolidation Act shall extend to any part of the premises situate in a town, or built upon or used for building purposes, and which shall not be required for the purposes of the company, in like manner as if such premises were not so situate, built upon, or used. And no part thereof shall in the meantime be let on lease, or from year to year, or otherwise, except to the vendor, his heirs or assigns.]

Costs to be paid by the company (*v*).

13. The fees of the vendor's surveyor amounting to £——, and all costs of the solicitors of the vendor up to and inclusive of the preparation and execution of this agreement, and of carrying the same into effect, and all other costs, charges, and expenses of the vendor as provided by the Lands Clauses Consolidation Act, 1845, or which might have been ordered by the Chancery Division to be paid by the company if the purchase-money had been deposited in the bank, shall be paid by the company.

As witness, &c.

The Schedule above referred to.

No. on Parliamentary Plan.	Description of Property.	Tenure.	Occupier.	Quantity. A. R. P.	Particulars of Incumbrances.

(*u*) See sect. 128 of the Lands Clauses Act, 1845.

Costs.

(*v*) The costs of conveyances, where lands are taken by agreement, are regulated by sect. 82 of the Lands Clauses Act, 1845, which provides that—"The costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation,

VIII. AGREEMENT *for the* SALE *of a* LEASEHOLD FARM. PURCHASER *to be let into* POSSESSION *before* ACCEPTANCE *of* TITLE.

AN AGREEMENT (*x*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part; WHEREBY IT IS AGREED as follows:— Parties.

1. The vendor shall sell, and the purchaser shall purchase, all that messuage or farmhouse, &c. [*describe parcels, see* post, *p.* 318], and which premises are more particularly described in the schedule hereto, and are delineated in the plan hereto, and therein coloured pink, and are now held, &c. [*continue as in clause* 1 *of Precedent II.*, ante, *p.* 279], for the price of £——, whereof part, that is to say, £——, shall be paid by way of deposit upon the execution of these presents, and the remainder thereof upon the completion of the purchase. Agreement to sell and purchase.

2, 3, 4, and 5. [*Take in clauses* 2, 3, 4, *and* 5 *from Precedent II.*, ante, *pp.* 279 *and* 280, *substituting* "vendor" *for* "vendors," *and add any special conditions as to title which may be required.*]

6. If any error, misdescription, or omission shall be discovered the same (if capable of compensation) shall not annul the sale, but a compensation shall be allowed or given by the vendor or purchaser as the case may require, such compensation to be settled, in case of difference of opinion, by A. B., of, &c., as referee on behalf of the vendor, and C. D., of, &c., as referee on behalf of the purchaser, if they agree, and by E. F., of, &c., if the said Errors not to annul sale, &c.

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deduction, and verification of such title." The more extensive obligations as to costs imposed by sect. 80, relate only to cases where land is taken compulsorily. The clause in the text provides for the payment by the company of all costs to which the company would be liable under sects. 81 and 82. As to the costs under sect. 82, see *Re London United Tramways Act*, 1900, [1906] 1 Ch. 534; *Re Thames Tunnel Act*, [1908] 1 Ch. 493; *Re Elementary Education Acts*, [1909] 1 Ch. 55. As to costs payable under sect. 80, see *Bentinck* v. *L. & N. W. Rly. Co.*, 40 Sol. J. 130; *Re Gaselee*, [1901] 1 Ch. 923; *Re Leeds Grammar School, ibid.* 228; *Re Magdalen Coll., Oxford*, [1901] 2 Ch. 786; *Re Jacobs*, [1908] 2 Ch. 691; *Wood Green, &c. Charity*, [1909] 1 Ch. 263; *Re Clark*, [1906] 1 Ch. 615.

(*x*) Stamp, 6*d*.

VIII. SALE OF LEASEHOLD FARM.

referees should disagree, and the decision of the said referees or of the said umpire, as the case may be, shall be final.

Completion of purchase.

7. The purchaser shall, on or before the —— day of ——, pay the balance of the purchase-money at the office of Messrs. ——, the solicitors of the vendor, at ——, and the purchase shall then and there be completed; AND thereupon the vendor and all other necessary parties (if any) will execute a proper assignment of the premises to the purchaser, such assignment to be prepared by and at the expense of the purchaser, and to contain covenants by the purchaser for the payment of the rent reserved by and observance and performance of the lessees' covenants and conditions contained in the said lease, and for indemnifying the vendor from all liability in respect of such rent and covenants.

Purchaser to take possession before completion.

8. The purchaser shall be at liberty to take possession of such parts of the premises as are described in the schedule hereto as meadow, pasture, and woodlands on the —— day of —— next, and of such parts of the said premises as are described in the said schedule as arable lands on the —— day of —— next, and of the remainder of the premises on the —— day of —— next, as fully to all intents and purposes as if an assignment of the premises had actually been executed: PROVIDED ALWAYS that such taking of possession shall not be deemed to be an acceptance by the purchaser of the vendor's title, or any waiver or abandonment by the purchaser of his right to make requisitions and objections as hereinbefore provided in respect of such title (*y*).

If completion delayed purchaser to pay interest.

9. The purchaser shall not be required to make to the vendor any payment by way of rent, interest, or otherwise, by reason of his taking possession as aforesaid of the premises before the completion of the purchase, and occupying them up to the said —— day of —— next, but if the purchase shall not be completed on that day from any cause whatever, other than a default by the vendor in deducing a title in accordance with this agreement on or before that day, the purchaser shall, as from that day, pay

(*y*) Entry into possession before conveyance generally amounts to a waiver of all objections to title (*Fludyer* v. *Cocker*, 12 Ves. 25), unless under special circumstances, as when the purchaser takes possession at the instance of the vendor representing the title to be perfect: *Vancouver* v. *Bliss*, 11 Ves. 458; so if the contract expressly authorises the purchaser to take immediate possession: *Stevens* v. *Guppy*, 3 Russ. 171.

interest on the unpaid balance of the purchase-money at the rate of 5 per cent. per annum, until completion of the purchase.

10. [*Insert clause as to increment value duty stamp*, ante, *p.* 277.]

As witness, &c.

The Schedule above referred to.

IX. AGREEMENT *by a* Vendor *to* Repurchase Premises *if* Required *by the* Purchaser *within a limited* Period, *in case the* Title Deeds *are not* Found *in the* Meantime.

ARTICLES OF AGREEMENT (*z*), made the —— day of ——, 19—, Between [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part. Parties.

Whereas the purchaser has purchased of the vendor a certain messuage or tenement, garden and premises, situate at ——, in the county of ——, and the inheritance thereof in fee simple, at the price of £——; And by an indenture dated the —— day of —— instant, and made between the vendor of the one part, and the purchaser of the other part, the vendor has, in consideration of the said sum of £——, granted and conveyed the said messuage and premises, with their appurtenances, unto and to the use of the purchaser, his heirs and assigns: And whereas the title deeds and writings relating to the said premises have been lost or mislaid, and previously to the completion of the said purchase and payment of the said sum of £——, it was agreed between the said parties, that if in the event and within the period hereinafter mentioned the said title deeds should not be found, the vendor should repurchase the said messuage and premises at the price of [*purchase-money*], and upon the terms and conditions and in manner hereinafter appearing. NOW THESE PRESENTS WITNESS, and it is hereby agreed and declared between and by the parties hereto, that in case the purchaser, his heirs,

Recital of purchase,

and conveyance in fee.

Recital of the loss of title deeds, and agreement for repurchase in case they should not be found within a limited period.

Testatum.

Covenant by vendor, that if purchaser

(*z*) Stamp, 6*d*.

IX. TO REPURCHASE IF TITLE DEEDS ARE NOT FOUND.

should require him to purchase premises within a limited period, before the deeds are found, he will purchase accordingly, at the sum now paid by purchaser.

Agreement by purchaser to convey accordingly.

Premises at the time of repurchase to be in good repair,

and fixtures in schedule in as good state as at present.

Agreement not to be deemed a mortgage.

or assigns (*a*), shall at any time after the expiration of three years, and within the space of nine years, to be computed from the date hereof, be desirous to sell the same messuage and premises comprised in the said indenture of even date herewith, and of such his or their desire shall give unto the vendor, his heirs, executors, or administrators (*a*), or leave at his or their usual place of residence, six calendar months' notice in writing, then and in such case, and at the expiration of the six calendar months for which such notice shall be given, if the deeds and writings mentioned in the first schedule hereto shall not previously thereto have been found and delivered to the purchaser, his heirs, or assigns, whole and undefaced, he the vendor, his heirs, executors, or administrators, shall purchase the said messuage and premises, of and from the purchaser, his heirs or assigns, at the price of £——: And the purchaser hereby agrees that on payment of the said sum of £——, pursuant to the aforesaid agreement, he the purchaser, his heirs or assigns, and all other persons claiming through or under him, shall, at the request, costs, and charges of the vendor, his heirs, executors, or administrators, convey the said messuage and premises, with the appurtenances, unto and to the use of the vendor and his heirs, or as he or they shall direct or appoint, free from incumbrances: And further that in case the vendor, his heirs, executors, or administrators, shall be called upon to repurchase the said messuage and premises, in pursuance of the agreement hereinbefore for that purpose contained, the same premises shall, at the time of such repurchase, be in good and tenantable repair: And upon the completion of such purchase, the same premises, together with the several fixtures mentioned in the second schedule hereto, shall be delivered to the vendor, his heirs or assigns, in as good order and condition, in all respects, as the same now are: Provided always, that these presents shall not, nor shall the above-recited indenture of the —— day of ——, 19—, be considered, construed, or taken to be a mortgage or security for money, or anything in the nature of a mortgage or security for money; nor shall the same give, or be construed to give, unto the vendor, his heirs, executors, administrators, or assigns, any right, title, or equity, to redeem the said premises, upon payment of the

(*a*) For these words may be substituted throughout:—

"or the person or persons claiming under him."

said purchase-money or sum of £——, with interest: PROVIDED ALSO, that in case the deeds and writings mentioned in the first schedule hereto shall, previously to any such notice as aforesaid, or to the expiration of the said six calendar months, for which such notice shall be given or left as aforesaid, be found and delivered to the purchaser, his heirs or assigns, whole and undefaced, then and in such case these presents and everything herein contained shall cease and be void.

IX. TO REPURCHASE IF TITLE DEEDS ARE NOT FOUND.

In case the deeds should be delivered, agreement to be void.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

X. AGREEMENT *for* SALE *of* FREEHOLDS *in* CONSIDERATION *of a* PERPETUAL RENTCHARGE.

AN AGREEMENT (*b*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREBY it is agreed as follows:—

1. The vendor shall sell and the purchaser shall purchase for the consideration hereinafter mentioned, ALL THAT [*describe parcels*], and the inheritance thereof in fee simple, with the appurtenances, free from incumbrances [except as hereinafter mentioned].

2. The consideration for the said purchase shall be a perpetual yearly rentcharge of £——, to be secured to the vendor as hereinafter mentioned.

3. [*Provision as to valuation of fixtures, &c., if required, see Special Conditions VII.*, ante, *p.* 246, *Form* 4.]

4. [*Possession and outgoings,* ante, *p.* 274.]

5. [*Production of leases and tenancy agreements,* ante, *p.* 274.]

6. [*Delivery of abstract,* ante, *p.* 275; *and stipulations as to title, evidence of title, and other matters, see Conditions of Sale.*]

7. [*Delivery of requisitions,* ante, *p.* 275.]

(*b*) Stamp, 6*d*.

X. OF FREEHOLDS IN CONSIDERATION OF A PERPETUAL RENTCHARGE.

8. [*Power to vendor to rescind if requisitions insisted on*, ante, *p.* 275.]

9. [*Expenses*, ante, *p.* 275.]

10. [*Errors in description*, ante, *p.* 276.]

11. [*Identity*, ante, *p.* 276.]

12. The purchase shall be completed on the —— day of ——, at the office at ——, of Messrs. ——, the vendor's solicitors, at which time and place the vendor and all other necessary parties (if any) will execute a proper conveyance of the premises to the purchaser.

13. The assurance of the premises shall be to the use that the vendor, his heirs and assigns, shall receive out of the premises a perpetual yearly rentcharge of £——, to commence from the —— day of ——, and to be payable half-yearly on the —— day of —— and the —— day of ——, without any deduction, the first payment to be made on the —— day of —— next, and to be secured by the several powers and remedies given by sect. 44 of the Conveyancing Act, 1881, in respect of rentcharges and other annual sums, and subject thereto to the use of the purchaser in fee simple. Such assurance shall contain the following covenants by the purchaser with the vendor:—(1) To pay the said rentcharge at the time and in manner aforesaid; and (2) to maintain and keep in repair the houses and buildings on the said land, and to rebuild the same from time to time when necessary, and so that there shall always be upon the said land houses and buildings of the clear yearly value of not less than £——. The said assurance shall also reserve to the owner for the time being of the said reserved rentcharge power, in case the purchaser, his heirs or assigns, shall refuse or neglect, wholly or in part, specifically to perform the covenant hereinbefore contained for maintaining, repairing, and rebuilding the said houses and buildings, specifically to perform the same, and for that purpose to enter upon the premises at any time within twenty-one years from the date of this agreement, and to remain in possession and take the rents and profits of the land entered upon until the said covenant and the expenses incurred in the execution of such power shall be satisfied.

[*Add, if vendor is a trustee or mortgagee, a provision that he shall only give the statutory covenant against incumbrances*, ante,

p. 277. Add also, if required, a clause as to retention of deeds by vendor, ante, *p. 277.*]

[*Clause as to increment value duty stamp,* ante, *p. 277.*]

IN WITNESS, &c.

CONVEYANCES ON SALE.

PRELIMINARY NOTE.

STAMPS.

THE stamping of conveyances is regulated by the Stamp Act, 1891, ss. 54 to 61, and the first schedule to that Act as amended by the Finance (1909-10) Act, 1910, s. 73. The following scale of stamp duties is provided by the schedule to the Act of 1891:— Stamp Act, 1891.

	£	*s.*	*d.*
CONVEYANCE or TRANSFER, whether on sale or otherwise:—			
(1.) Of any stock of the Bank of England .	0	7	9
(2.) Of any stock of the Government of Canada inscribed in books kept in the United Kingdom, or of any Colonial stock to which the Colonial Stock Act, 1877, applies— For every 100*l.*, and also for any fractional part of 100*l.*, of the nominal amount of stock transferred . .	0	2	6
And see sect. 62.			
CONVEYANCE or TRANSFER on sale,			
Of any property (*except such stock as aforesaid*),			
Where the amount or value of the consideration for the sale does not exceed 5*l.* . . .	0	0	6
Exceeds 5*l.*, and does not exceed 10*l.* . .	0	1	0
„ 10*l.* „ 15*l.* . .	0	1	6
„ 15*l.* „ 20*l.* . .	0	2	0
„ 20*l.* „ 25*l.* . .	0	2	6
„ 25*l.* „ 50*l.* . .	0	5	0

	£	s.	d.
Exceeds 50*l.*, and does not exceed 75*l.* . .	0	7	6
.. 75*l.* „ 100*l.* . .	0	10	0
.. 100*l.* „ 125*l.* . .	0	12	6
.. 125*l.* „ 150*l.* . .	0	15	0
.. 150*l.* „ 175*l.* . .	0	17	6
.. 175*l.* „ 200*l.* . .	1	0	0
.. 200*l.* „ 225*l.* . .	1	2	6
.. 225*l.* „ 250*l.* . .	1	5	0
.. 250*l.* „ 275*l.* . .	1	7	6
.. 275*l.* „ 300*l.* . .	1	10	0
„ 300*l.*			
For every 50*l.*, and also for any fractional part of 50*l.*, of such amount or value . . .	0	5	0

And see sects. 54, 55, 56, 57, 58, 59, 60, and 61.

CONVEYANCE or TRANSFER by way of security of any property (*except such stock as aforesaid*), or of any security.

See "*Mortgage*," &c., and "*Marketable Security*."

CONVEYANCE or TRANSFER of any kind not hereinbefore described 0 10 0

And see sect. 62.

Stamp duty doubled by the Finance Act, 1910.

By sect. 73 of the Finance (1909-10) Act, 1910, it is enacted that the stamp duties chargeable under the heading "Conveyance or Transfer of Sale of any Property" in the first schedule to the Act of 1891 shall be double those specified in that schedule, but this section shall not apply to the transfer of stock or marketable securities as defined in sect. 122 of the Act of 1891, or to a conveyance or transfer where the consideration does not exceed 500*l.*, and the instrument contains a statement that the transaction thereby effected does not form part of a larger transaction or series of transactions in respect of which the total amount of the consideration exceeds 500*l.* This makes it necessary, in order to save duty, to insert in every conveyance where the transaction does not exceed 500*l.* a statement to the effect mentioned in the Act. For the form of such a statement, see *post*, p. 317.

Statement as to value.

Sects. 54 to 62

Sect. 54 of the Stamp Act, 1891, makes a "Conveyance on

Sale" include every instrument and every decree or order whereby any property, or any estate or interest in property, upon the sale thereof is transferred to or vested in a purchaser. of the Stamp Act, 1891.

Sect. 55 deals with how duty is to be charged where the consideration consists of stock or marketable securities; sect. 56 with the duty payable where the consideration is periodical payments; sect. 58 provides for splitting up or apportioning the duty where required by the nature of the transaction; sect. 59 makes certain contracts chargeable with duty on conveyances (see "Contracts," Preliminary Note); sect. 60 deals with the sale of an annuity or right not before in existence; sect. 61 declares how the principal instrument for stamping purposes is to be ascertained on a sale of copyholds; and sect. 62 provides that every instrument, decree, or order whereby property (except on sale or mortgage) is transferred or vested is to be charged with duty as a conveyance or transfer of property.

As to the stamp on a conveyance of an equity of redemption, see sect. 57 and the note to Precedent XXX., *post*, p. 373. Equity of redemption.

By sect. 74 of the Finance (1909-10) Act, 1910, any conveyance *inter vivos* not being in favour of a purchaser or incumbrancer, is made chargeable with the like stamp as a conveyance on sale, except in the case of a conveyance to an incorporated body precluded from dividing profits for the purpose of an open space, or for its preservation for the benefit of the nation, or a conveyance for nominal consideration for securing a loan, or for effectuating the appointment or retirement of a trustee, or under which no beneficial interest passes, or made by a trustee to a beneficiary, or a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property. Conveyances *inter vivos*.

Settled Land Acts.

The provisions of the Settled Land Acts, 1882 to 1890, are fully discussed in Key and Elphinstone's Precedents, 10th ed., p. 583 *et seq.*, and in the notes to the Acts in Wolstenholme's Conveyancing, &c. Acts, 10th ed., p. 352 *et seq.*, which should be consulted in cases of difficulty. Settled Land Acts.

By sect. 2 (1) of the Settled Land Act, 1882, any instrument by virtue of which land, or an estate or interest in land, stands limited to or in trust for any persons by way of succession, creates a "settlement" for the purposes of the Act; and by sub-sect. (5) Definition of "settlement."

Tenant for life.

any person for the time being entitled to possession of settled land is, for the purposes of the Act, the tenant for life of that land. Under sect. 8 of the Settled Land Act, 1884, the estate of a tenant by the curtesy is to be deemed to be an estate arising under a settlement made by his wife for the purposes of the Settled Land Act, 1882.

Powers of the Act given to limited owners (*a*).

By sect. 58 of the Settled Land Act, 1882, the powers of a tenant for life under the Act are given to certain limited owners when entitled beneficially (*Re Jemmett and Guest*, [1907] 1 Ch. 629), other than a tenant for life, as defined by sect. 2 (5), viz., (i.) a tenant in tail, (ii.) a tenant in fee with an executory disposition over on failure of issue or in any other event, (iii.) a person entitled to a base fee, (iv.) a tenant for years determinable on life not holding merely under a lease at a rent, (v.) a tenant for the life of another not holding merely under a lease at a rent, (vi.) a tenant for life whose estate is defeasible in any event during that life, (vii.) a tenant in tail after possibility of issue extinct, (viii.) a tenant by the curtesy, (ix.) a person entitled to the income of land, whether subject to expenses of management or not, or until sale of the land or forfeiture of his interest.

Infants.

By sect. 59 of the same Act an infant absolutely entitled is to be deemed tenant for life, and the land is to be settled land for the purposes of the Act, and sect. 60 provides for the exercise by the trustees of the settlement of the powers of an infant under the Act.

Married women.

Sect. 61 (2) gives the powers of the Act to a married woman entitled for her separate property or as a *feme sole*, and by subsect. (3) of the same section, where she is entitled otherwise than as aforesaid, she and her husband together are to have the powers of a tenant for life. As to married woman restrained from anticipation, see *Bates* v. *Kesterton*, [1896] 1 Ch. 159; and *Re Pocock and Prankerd's Contract*, [1896] 1 Ch. 302; and as to an infant married woman, see *Re Cardross*, 7 Ch. D. 728; *Re D'Angibau*, 15 Ch. D. 228.

(*a*) As to who are "tenants for life" or "persons having the powers of a tenant for life," see *Re Clitheroe Estate*, 28 Ch. D. 378, 393; 31 Ch. D. 135, 140; *Re Carne's S. E.*, [1899] 1 Ch. 324; *Re Money Kyrle's S.*, [1900] 2 Ch. 839; *Re Llanover's Will*, [1903] 2 Ch. 16; *Re Bond*, 48 Sol. J. 192; and *Re Sumner's S. E.*, [1911] 1 Ch. 315. The case of *Re Jemmett and Guest* is explained and distinguished in *Re Johnson*, [1914] 2 Ch. 134.

Lunatics.

Sect. 62 provides that in the case of a lunatic tenant for life his powers may be exercised by the committee of his estate under an order of the Court.

Power of sale.

Under sect. 3 of the Settled Land Act, 1882, a tenant for life may (i.) sell the settled land, or any part thereof, or any easement, right, or privilege of any kind over or in relation to the same; (ii.) in the case of a manor with or without reservation of mines or minerals; (iii.) exchange for other land; (iv.) concur in making partition. The sale must be for the best price that can reasonably be obtained. (Sect. 4.) Under sect. 19 the owner of a share (see sect. 2 (10) (i.)) may concur with the owners of other shares in selling the land (*b*).

Sale of mansion house.

Under sect. 10 (2) of the Settled Land Act, 1890 (replacing sect. 15 of the Act of 1882), the consent of the trustees of the settlement or an order of the Court is required for the sale of the principal mansion house, pleasure grounds, and park.

Land subject to trust for sale: sect. 63.

Where land is subject to a trust for sale, and for the application of the income for the benefit of a person or persons for life, it is to be deemed settled land, and the person or persons entitled to the income is or are to be deemed tenant or tenants for life (see sect. 63 (1), with which must be read sect. 10 of the Conveyancing Act, 1911), and the provisions of the Act are to extend to such person or persons, but by sect. 7 of the Settled Land Act, 1884, the powers conferred by sect. 63 of the Act of 1882 are not to be exercised without leave of the Court. See also sect. 6 of the Act of 1884 as to "consents."

The result of sects. 6 and 7 of the Settled Land Act, 1884, is that until the tenant for life has obtained "leave" to exercise his power trustees within the meaning of sect. 63 of the Act of 1882 can sell without the consent of the tenant for life, unless such consent is required by the settlement. The order giving "leave" is registered as a *lis pendens*.

Notice to trustees.

Sect. 45 of the Settled Land Act, 1882, requires a month's notice in writing to be given by the tenant for life to the trustees of the settlement for the purposes of the Act before he exercises his powers under the Act, but by sect. 5 (1) of the 1884 Act the notice

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(*b*) As to selling such share without such concurrence, see *Cooper* v. *Belsey*, [1899] 1 Ch. 639. And as to the duties of trustees concurring in a sale with other joint owners, see *Re Cooper and Allen*, 4 Ch. D. 802.

may be of a general intention in that behalf, and by sub-sect. (3) a trustee may in writing waive such notice or accept less than a month's notice.

Restrictive covenants.

Upon a sale a tenant for life may impose restrictive covenants or may enter into such covenants so as to bind the land. (Settled Land Act, 1882, ss. 4 (6), 31 (2); *Long* v. *Gray*, 58 Sol. J. 46.)

Who are trustees for the purposes of the Acts.

Under sect. 2 (8) of the Settled Land Act, 1882, trustees (1) with a power of sale, or (2) with power to consent to a sale, or (3) declared by the settlement to be trustees for the purposes of the Act, are trustees of the settlement for the purposes of the Act. And by sect. 16 of the Settled Land Act, 1890, trustees with power of sale of other land in settlement, subject to the same limitations, or with power to consent to such sale, or trustees with a future power of sale, or power to consent to a future sale, are to be trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890. (*Re Johnson's S. E.*, [1913] W. N. 222; 57 Sol. J. 717.)

Conveyance.

A conveyance under the Acts by a tenant for life is effectual to pass the land conveyed or the easements, rights, or privileges created, discharged from all limitations, powers, and provisions of the settlement, and all estates, interests, and charges to arise thereunder (see Settled Land Act, 1882, s. 20 (2)), except (i.) estates, &c. having priority to the settlement, (ii.) estates, &c. created for securing money actually raised, (iii.) leases, grants of easements, &c.

Payment of capital money to trustees or into Court.

Sect. 22 of the Settled Land Act, 1882, requires capital money arising under the Act to be paid either to the trustees of the settlement or into Court, at the option of the tenant for life, and sect. 39 of the same Act directs that money arising under the Act shall not be paid to fewer than two persons, unless the settlement authorises the receipt of capital money by one. (*Re Garnett*, 25 Ch. D. 595; *Re Johnson's S. E.*, *supra*.) But the Public Trustee can alone give a receipt. (See *Re Leslie's Hassop Estate*, [1911] 1 Ch. 611.) Sect. 40 enables the trustees to give a valid discharge for money paid to them.

Trustees' receipts.

Powers of tenant for life not assignable.

Sect. 50 of the Settled Land Act, 1882, makes the powers of a tenant for life under the Act unassignable, and provides that they shall be exercisable notwithstanding any assignment by operation of law or otherwise of his estate or interest, and (2) a contract by him not to exercise his powers is void, but (3) the section is to

operate without prejudice to the rights of an assignee for value of the estate or interest of the tenant for life. (See *Re Mundy and Roper*, [1899] 1 Ch. 275; *Re Lord Wimborne and Browne*, [1904] 1 Ch. 537; *Re Bruen*, [1911] 1 Ir. R. 76.)

Copyholds.

The production of a proper conveyance for entry upon the court rolls entitles a purchaser, upon payment of customary fines, &c., to admission to copyholds without surrender (Settled Land Act, 1882, s. 20 (3)). As to the fines payable on admittance without surrender under such a conveyance, see *Re Naylor and Spendla*, 34 Ch. D. 217.

The Conveyancing Acts.

Omission of "general words," "estate clause," and "covenants for title."

The Conveyancing Act, 1881, has had the practical result of shortening conveyances by the omission (1) of GENERAL WORDS in reliance on sect. 6, (2) of the ESTATE CLAUSE under sect. 63, and (3) of the express COVENANTS FOR TITLE which are now implied by stating in the operative part the character under which the person conveys, *e.g.*, beneficial owner, trustee, or mortgagee. (Sect. 7.)

Words of limitation.

It also makes it sufficient, in limiting an estate "in fee simple," to use those words without the word "heirs," and in limiting an "estate in tail," or "in tail male," or "in tail female," to use those expressions without the words "heirs," or "heirs male," or "heirs female" (as the case may be) "of the body." (See sect. 51.)

Acknowledgment as to deeds.

It allows an acknowledgment and undertaking as defined by the Act, s. 9, carrying with them certain obligations thereby imposed to take the place of the covenant to produce deeds; and it provides

Receipt in body of the deed.

(sect. 54) that a receipt in the body of the deed shall be a sufficient discharge for the consideration money, and makes the production of the deed with a receipt in the body thereof, by a solicitor, sufficient authority for the payment to him of the purchase-money (sect. 56), (extended to the case of trustees by the Trustee Act, 1893, s. 17).

No longer necessary to mention heirs, &c. in covenants.

The Act also renders it unnecessary to mention heirs, executors, administrators, or assigns of a covenantor or covenantee, or the survivors or survivor of several covenantees, or the heirs, &c. of the survivor or their or his assigns, in covenants or bonds. (Conveyancing Act, 1881, ss. 58, 59, 60.) But this will not make a covenant run with the land where it would not so run if the words "heirs and assigns," or "executors, administrators, and assigns," were expressed in the covenant. See as to the effect of these sections Wolstenholme's Conveyancing, &c. Act, 10th ed., pp. 129 *et seq.*

As to the other provisions of the Conveyancing Acts, see the notes to the several precedents affected thereby.

Land Transfer Act, 1897.

See Robbins and Maw, 4th ed., p. 70; Wolstenholme, 10th ed., 206 *et seq.*

Part I. of the Land Transfer Act, 1897, establishes a real representative. In the case of a person dying after the commencement of the Act, s. 1, sub-s. (5), his real estate (other than copyholds or customary freehold where admission is necessary to perfect the title of a purchaser from the customary tenant (sect. 1, sub-sect. (4)): see *Somerville and Turner*, [1903] 2 Ch. 583) devolves like chattels real upon his personal representatives (sect. 1, sub-sect. (1)) for the purposes of administration (sect. 2 (3)), and subject thereto as trustees for the persons by law beneficially entitled (sect. 2 (1)). By sect. 3 (1) the personal representatives may at any time assent to the devise, or convey to the heir or devisee either subject to or without a charge for payment of their liabilities as personal representatives. (See *Re Cary and Lott*, [1901] 2 Ch. 463; and see 44 Sol. J. 191 and 50 Sol. J. 266.) And by sect. 3 (2) after the expiration of a year the person entitled to the land, if the personal representatives fail to convey the land to him after request made by him, may apply to the Court for an order to compel them to do so, or in the case of registered land, that the person so entitled may be registered as proprietor either solely or jointly with the personal representatives.

The "assent," if not under seal, is not liable to stamp duty. (*Kemp* v. *Commrs. of I. R.*, [1905] 1 K. B. 581.) Under sect. 12 of the Conveyancing Act, 1911, in the case of dispositions made after 1911, the proving executor or executors can convey. A married woman who is a personal representative can act as if she were a *feme sole*. (See Married Women's Property Act, 1907, s. 1.)

Part I. of the Land Transfer Act, 1897, does not bind the Crown (*In bonis Hartley*, [1899] P. 40), and the grant of administration to the solicitor to the Treasury should be limited to the personal estate devolving to the Crown on an intestacy.

Registered Land.

For forms of instruments of transfer of registered land, see Appendix, *post*, pp. 664 *et seq.*

PRECEDENTS.

I. CONVEYANCE *of* FREEHOLDS *by* VENDOR SEISED *in* FEE SIMPLE *to a* PURCHASER *in* FEE SIMPLE, *without* RECITALS (*c*).

THIS INDENTURE (*d*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part, WITNESSETH that, in consideration of the sum of £——, now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged) (*e*), the vendor hereby, as beneficial owner (*f*), grants unto the purchaser ALL THAT messuage or cottage, with the garden, orchard, and close or piece of meadow or pasture land respectively adjoining thereto, situate in the parish of ——, in the county of ——, containing in the whole by admeasurement —— acres, —— roods, and —— perches, or thereabouts, and bounded on the north side thereof by the high road from [X.] to [Y.], and on the remaining sides thereof by land of the said [*vendor*] (*or as the case may be*), which premises hereby conveyed are in the occupation of [*tenant*]

Parties.

Testatum.

Conveyance.

Parcels; cottage garden, &c. and close of meadow land (*g*).

(*c*) The above precedent is the simplest form of a conveyance in fee, by a vendor who is seised in fee, and is *sui juris*. It is applicable equally where the sale is by auction as where it is by private contract. All specific reference to a written contract for sale, or to the particulars and conditions on a sale by auction, should, if possible, be avoided. This form may be used for a conveyance by a married woman seised in her own right, and married, or whose title accrued after the commencement of the Married Women's Property Act, 1882.

As to the form in the text.

(*d*) Stamp, *ad valorem* on the amount of the purchase-money: see Preliminary Note, *ante*, p. 307.

Stamp.

(*e*) With respect to the effect of the receipt in the body of the deed, see Conveyancing Act, 1881, s. 54; and *ante*, p. 313.

Receipt clause.

(*f*) This phrase implies the statutory covenants for title on the part of the person who conveys: these covenants are contained in sect. 7 (1) (A) of the Conveyancing Act, 1881. As to the application of this section to registered dispositions of land, see L. T. Act, 1897, s. 16 (3); and L. T. R. 99. The use of the word "grant" is retained in this and the following precedents, but is not necessary in order to convey hereditaments, corporeal or incorporeal: see the Conveyancing Act, 1881, s. 49.

Implied covenants for title.

(*g*) For other freehold parcels, see the following precedents.

I. OF FREEHOLDS TO A PURCHASER WITHOUT RECITALS.

as tenant from year to year, TO HOLD all the premises unto and to the use of the purchaser, his heirs and assigns (*h*).

Habendum.

General words.

(*h*) As to the omission of general words and estate clause, see the Conveyancing Act, 1881, ss. 6 and 63. If it is intended to secure to the purchaser the grant of rights and easements, which formerly existed, but which have been extinguished by unity of possession, the following words may be added at the end of the parcels:—

"TOGETHER with all rights, easements, and appurtenances appertaining to the premises, or any part thereof, or reputed to appertain thereto, or now or at any time heretofore demised, held, or enjoyed with, or reputed or known as part of, or appurtenant to the premises or any part thereof."

Words of limitation.

As to the use of the expression "in fee simple" ("in fee" is not sufficient: *Re Ethel and Mitchells*, [1901] 1 Ch. 945; *Ford* v. *Ferguson*, [1906] 1 Ir. R. 607) without the word "heirs," see Conveyancing Act, 1881, s. 51, and the form given in the 4th schedule to that Act. The old words of limitation are generally adopted in these precedents. If the conveyance is to joint tenants, say—

"Conveys unto the said [*purchasers*], all that [*parcels*]; To HOLD all the premises unto and to the use of the said [*purchasers*], their heirs and assigns."

If the conveyance is to tenants in common, say—

"To HOLD all the premises unto and to the use of the said [*purchasers*], and their respective heirs and assigns, as tenants in common in equal shares," *or* "in the shares following, that is to say," &c. (*specifying the several shares*).

In a conveyance of freeholds or of leaseholds held for a term of which forty years are unexpired or for lives with two lives yet to fall in, if the land is in a compulsory district (whether previously registered or not), and the owner of the legal estate is under any liability, the following covenant should be added:—

Covenant by purchaser to register.

"The purchaser hereby covenants with the vendor that he the purchaser will procure himself to be registered as proprietor of the hereditaments hereby assured under the Land Transfer Acts, 1875 and 1897, and will produce the land certificate to the vendor or his solicitor within fourteen days from the date hereof."

Express covenants for title.

As to the insertion of the statement as to value, see Preliminary Note, *supra*, p. 308. If for any reason it should be desired to insert in a conveyance by way of sale of freeholds, express covenants for title, the words "as beneficial owner" will be omitted in the operative part of the deed, and Form A or Form B in the Appendix, *post*, p. 662, may be used according to circumstances.

[And it is hereby declared and certified that the transaction hereby effected does not form part of a larger transaction, or of a series of transactions, in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds the sum of 500*l.*]. Statement as to value.

IN WITNESS, &c.

II. CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* FEE. RECITAL *of* VENDOR'S SEISIN, *&c.* ACKNOWLEDGMENT *and* UNDERTAKING *as to* DEEDS. (VARIATIONS *in notes where* PART *of the* LAND *is* REGISTERED.)

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the vendor is seised of, or entitled to the hereditaments hereby assured for an estate in fee simple free from incumbrances (*j*), and has agreed to sell the Parties. Recitals: of vendor's seisin and agreement for sale;

(*i*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

(*j*) As to recitals becoming evidence, see V. & P. Act, 1874, s. 2; and as to recital of vendor's seisin, see *Bolton* v. *London School Board*, 7 Ch. D. 766, distinguished and disapproved in *Re Wallis and Grout's Contract*, [1906] 2 Ch. 206. If any part of the land is registered the recital of seisin should be followed by a recital of registration— Registered land.

"WHEREAS the vendor is registered under the Land Transfer Acts, 1875 and 1897, as proprietor of the hereditaments hereinafter [secondly] described and assured with a —— ["possessory," "qualified," *or* "absolute," *as the case may be*] title under the heading, District ——, Parish ——, and Title No. ——,"

and there should be inserted at the end of the deed the following covenant:—

"The vendor hereby covenants with the purchaser that he will forthwith execute and deliver to the purchaser an instrument of transfer already prepared of the hereditaments hereinbefore [secondly] described and assured to the purchaser ready for registration under the said Land Transfer Acts, and will hand to him the land certificate thereof, and will do every act, matter or thing necessary to enable the purchaser to be registered as proprietor of the said last mentioned hereditaments."

II. OF FREEHOLDS TO A PURCHASER WITH RECITALS, ACKNOWLEDGMENT, &c. AS TO DEEDS.

same unto the purchaser for the sum of £——; AND WHEREAS the deeds and documents specified in the schedule hereto relate not only to the hereditaments hereby conveyed, but also to other property of the vendor, and it has been agreed that the vendor shall retain possession of such deeds and documents, and that he shall give the acknowledgment and undertaking hereinafter contained respectively in regard to the same. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement,

of agreement as to deeds.

Testatum.

and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner (*k*), grants unto the purchaser,

Conveyance.

Parcels: farm.

ALL THAT messuage or farmhouse, with the outbuildings and garden thereto belonging, and the several closes or pieces of land known as the —— Farm, situate, &c., containing, &c., and bounded, &c. [*as in the last precedent*], and in the occupation of [*tenant*], as yearly tenant thereof,

Habendum.

To HOLD the same unto and to the use of the purchaser, his heirs and assigns:

Acknowledgment and undertaking as to muniments.

AND the vendor hereby acknowledges the right of the purchaser to the production of the several deeds and documents specified in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof (*l*).

[*Add statement as to value if appropriate, see* ante, *p.* 317.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

If all the land is registered, a registered transfer will in most cases suffice, except where recitals are necessary and are too long for the registered instrument or where trusts are declared not being trusts allowed by the registrar: sched. I. to the Land Transfer Act, 1897. For forms of transfer of registered land, see *post*, p. 664 *et seq.*

(*k*) As to the covenants for title implied by this phrase, see the Conveyancing Act, 1881, s. 7 (1) (A).

(*l*) As to retainer of documents of title, see the Vendor and Purchaser Act, 1874, s. 2; and as to the effect of the acknowledgment and undertaking as to deeds, see the Conveyancing Act, 1881, s. 9. For the protection of the purchaser, a memorandum of this acknowledgment, &c. should, if possible, be endorsed on the last deed by which the whole property was conveyed to the vendor, or his ancestor or testator.

III. CONVEYANCE *by* HEIR-AT-LAW *of an* INTESTATE *to a* PURCHASER *in* FEE. RELEASE *of* DOWER *by* WIDOW *of* INTESTATE (*m*). *The* INTESTATE *having* DIED *since the Land Transfer Act*, 1897, *his* PERSONAL REPRESENTATIVE *joins to* CONVEY *the* PROPERTY.

III. BY HEIR-AT-LAW OF INTESTATE —RELEASE OF DOWER.

THIS INDENTURE (*n*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the first part; [*administrator*], of, &c., of the second part; [*dowress*], of, &c., of the third part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the fourth part: WHEREAS [*ancestor*], late of, &c., deceased, being at the time of his death seised of or entitled to the hereditaments hereby conveyed for an estate in fee simple, died on the —— day of —— intestate, leaving the vendor, his eldest son, and the said [*dowress*], his widow, him surviving; AND letters of administration of the real and personal estate of the said [*ancestor*] were on the —— day of —— granted by the Principal [the —— District] Probate Registry to the said [*administrator*]; AND WHEREAS the vendor has agreed to sell to the purchaser the said hereditaments in fee simple, free from incumbrances, for the sum of £——; AND WHEREAS the said [*dowress*] being satisfied with the provision made for her by the vendor in lieu and satisfaction of her dower (as she hereby acknowledges), has agreed to join in these presents for the purpose and in manner hereinafter appearing; AND the

Parties.

Recitals: of decease of ancestor intestate, leaving son and widow surviving;

of agreement for sale;

of agreement for release of dower.

(*m*) The above precedent is applicable to a case where the whole of the intestate's lands are sold, as is usually the case, intestacies being more frequent among the holders of small freehold properties than among large landowners. Where the sale is only of part of the intestate's lands, the release of dower may, it would seem, be most conveniently effected by a separate deed, dated the day before the conveyance to the purchaser, whereby the dowress will release the lands contracted to be sold from her dower in consideration of (say) a life annuity of an amount equal to one-third of the nett rents and profits of the lands sold, charged on the remainder of the estate, or otherwise sufficiently secured. The conveyance to the purchaser will then be in the ordinary form, as in Precedents I. or II. As to the widow's rights under an intestacy where the intestate leaves no issue, see the Intestates' Estates Act, 1890; *Re Charriere*, [1896] 1 Ch. 912; *Re Twigg*, [1892] 1 Ch. 579; and *Re Cuffe*, [1908] 2 Ch. 500.

Release of dower by separate deed.

Intestates' Estates Act, 1890.

(*n*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

III. BY HEIR-AT-LAW OF INTESTATE —RELEASE OF DOWER.

Testatum.

said [*administrator*] has also agreed to join in these presents in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreements, and in consideration of the premises, and also in consideration of the sum of £——, with the assent of the said [*administrator*], now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor, as beneficial owner, hereby grants, and the said [*administrator*], as the personal representative of the said [*ancestor*], deceased, by virtue of the powers conferred on him by the Land Transfer Act, 1897, and of every other power in that behalf him enabling, and by the direction of the vendor, directing as beneficial owner (*nn*), hereby grants and releases (*o*), and the said [*dowress*], as beneficial owner (*p*), hereby releases and conveys, unto the purchaser, ALL THAT close or parcel of land situate in the parish of ——, in the county of ——, containing by admeasurement —— acres, —— roods, and —— perches, or thereabouts, and delineated with the abuttals thereof in the plan drawn in the margin hereof (*q*), which premises were lately in the occupation of [A. B.], and are now in the occupation of [C. D.]: TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, freed and discharged from all dower of the said [*dowress*], and all rights, claims, and demands in respect thereof.

Parcels: Close of land by reference to plan.

Habendum, free from dower.

[*Statement as to value, if required, see* ante, *p.* 317.]

IN WITNESS, &c.

(*nn*) See C. Act, 1881, s. 7 (2).

(*o*) As to the necessity for the concurrence of the personal representative in the conveyance, if he has not previously conveyed it to the heir-at-law, see the provisions of the Land Transfer Act, 1897, Part I.; Preliminary Note, *ante*, p. 314.

(*p*) It must be borne in mind that dower is of the nature not of a charge upon, but of a possessory interest in land.

(*q*) If it is desired to dispense with a plan, the boundaries may be specified as in Precedent I., *ante*, p. 315.

IV. CONVEYANCE *of* FREEHOLDS *in* FEE SIMPLE *by* APPOINTMENT *and* GRANT *under an* EXPRESS POWER (*r*).

IV. OF FREEHOLDS BY APPOINTMENT.

THIS INDENTURE (*s*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS (*t*) by an indenture dated the —— day of ——, 19—, and made between [*parties*], the hereditaments hereby appointed now stand limited to such uses as the vendor shall by any deed or deeds appoint, and in default of such appointment to the uses therein mentioned [for the benefit of the vendor]; AND WHEREAS the vendor has agreed to sell to the purchaser the said hereditaments in fee simple, free from incumbrances, for the sum of £——: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), he the vendor, as beneficial owner, in execution of the power reserved to him by the hereinbefore recited indenture (*u*), and of all other powers (if any) enabling him in this behalf, hereby appoints (*x*), and by virtue of his estate and interest (if any) hereby grants and confirms unto the purchaser, ALL THAT mes-

Parties.

Recitals: of power;

of agreement for sale.

Testatum.

Appointment.

Parcels:

(*r*) It is usual, though not necessary, in the case of a vendor who has merely a power of appointment, and takes no estate in default of appointment, to make the conveyance by both appointment and grant, lest it should turn out that he had somehow acquired an estate in default of appointment. This form is adapted to either case, where the vendor has or where he has not such an estate; but where the recitals show that he takes an estate in default of appointment the words "if any" in the appointment should be omitted.

(*s*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

(*t*) If the power is of a special and unusual character, it should be recited *verbatim*, so far as necessary to show that the formalities required are satisfied by the conveyance.

(*u*) If it be so desired, for the sake of brevity, the recitals may be omitted, and the following words substituted in the operative part for those in the text:—

"in execution of a power in this behalf reserved to him by an indenture, dated, &c., and made between [*parties*], and of all other powers, &c."

(*x*) The term "convey" includes "appoint" for the purposes of the Conveyancing Act, 1881, s. 2 (v) of that Act.

IV. OF FREEHOLDS BY APPOINTMENT.

house in London.

suage or dwelling-house situate on the west side of —— Street, in the parish of ———, in the county of ——, and known as No. — in the said street, and being the fifth house in the same street northward of —— Square, with the yard, offices, stable, coach-house, and outbuildings in rear of and belonging to the same messuage, To HOLD the same unto and to the use of the purchaser, his heirs and assigns.

[*Add (if required) statement as to value,* ante, *p.* 317; *and acknowledgment and undertaking as to muniments,* ante, *p.* 318.]

IN WITNESS, &c.

V. COVENANT *to* SURRENDER COPYHOLDS *by way of* SALE.

THIS INDENTURE (*y*), made the —— day of ——, 19—,

Parties.

BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Recitals: of vendor's seisin;

WHEREAS the vendor is seised of, or entitled to, the fee simple in possession according to the custom of the manor of ——, in the county of ——, of and in the lands and hereditaments hereinafter described and covenanted to be surrendered free from incumbrances:

of agreement for sale.

AND WHEREAS the vendor has agreed to sell to the purchaser the said hereditaments and premises for the sum of £——:

Testatum.

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant to surrender copyholds.

1. In consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor, as beneficial owner (*z*), hereby covenants with the purchaser that he the vendor, or his heirs or assigns, and all other necessary parties (if any), will forthwith, at the cost of the purchaser, his heirs or assigns, surrender into the hands of the lord [*or* lady] of the said manor, according to the custom of the manor,

Parcels.

ALL THOSE several pieces or parcels of land containing in the whole by admeasurement —— acres, —— roods, and —— perches, or thereabouts, and situate in the parish of ——, in the county of ——, and hereinafter particularly described, with their respective

(*y*) This deed will bear a 10*s.* stamp. The *ad valorem* stamp will be on the surrender: see Stamp Act, 1891, ss. 61, 65.

(*z*) As to implied covenants for title, see Conveyancing Act, 1881, s. 7 (1) (A). The term "convey" includes covenant to surrender copyholds: see sect. 2 (v) of the Act.

dimensions and chattels, that is to say: First, that piece of land known as the —— Close, containing, &c., and bounded, &c.; and, Secondly, that other piece of land with the messuage or cottage and outbuildings erected and being thereon known as ——, containing, &c., and bounded, &c., which last mentioned premises were formerly in the occupation of [C. D.], but are now in the occupation of [E. F.], and to all of which premises the vendor was admitted out of Court [*or* at a Court held for the said manor, on the —— day of ——, 19—], on the surrender of [*surrenderor*] (*a*): To the use of the purchaser, his heirs and assigns, according to the custom of the said manor, at, by and under the accustomed rents, fines, suits, and services.

V. SURRENDER OF COPYHOLDS.

Parcels.

To use of purchaser.

2. The vendor hereby declares that until the said hereditaments and premises shall be so surrendered as aforesaid, he the vendor and his heirs will stand possessed thereof in trust for the purchaser, his heirs and assigns.

Declaration of trust till surrender.

[*Acknowledgment, &c. as to muniments*, ante, *p.* 318.]

In witness, &c.

VI. SURRENDER *on* Sale *of* Copyholds *and* Admittance *of* Purchaser (*b*).

Manor of —— in the County of ——. } BE IT REMEMBERED that, on the —— day of, &c. [*vendor*], of, &c., one of the copyhold tenants of the said manor, came before [*steward*], gentleman, steward of the said manor, and in consideration of the sum of £—— to the said [*vendor*] then paid by [*purchaser*], of, &c., did out of Court surrender into the hands

Memorandum.

Surrender.

(*a*) Having regard to the vagueness of the descriptions of copyholds on the court rolls, a vendor is not bound to reconcile the description on the court roll with the present state of the property if he can prove that the property has continually passed and been enjoyed by that description: see *Long* v. *Collier*, 4 Russ. 267.

(*b*) The surrender will bear an *ad valorem* stamp as on a conveyance on sale: see Preliminary Note, *ante*, p. 307. The receipt for the purchase-money will be indorsed and will bear a 1*d.* stamp, as sects. 54 and 55 of the C. Act, 1881, apply only to deeds. Where the surrender is in Court the *ad valorem* stamp will be affixed to the copy of the court rolls, but the statement as to value will be on the note delivered to the steward in accordance with sect. 66 of the Stamp Act, 1891.

VI. SURRENDER OF COPYHOLDS.

of the lord of the said manor by the hands and acceptance of the said steward by the rod, according to the custom of the said manor, ALL THAT [*describe the lands from the copy of court roll*], with the appurtenances, to the use of the said [*purchaser*], his heirs and assigns, for ever, To HOLD by copy of court roll, at the will of the lord, according to the custom of the said manor, and by and under the rents and services therefor due and of right accustomed: AND BE IT FURTHER REMEMBERED that, on the day above mentioned the said [*purchaser*] came before the said [*steward*] and prayed to be admitted to the said copyhold hereditaments to which said copyhold hereditaments the lord of the manor by the said [*steward*] granted seisin thereof by the rod, To HOLD the same unto the said [*purchaser*], and his heirs, at the will of the lord, according to the custom of the said manor, by and under the rents and services therefor due and of right accustomed, and so saving the right of the lord, the said [*purchaser*] was admitted tenant thereof, and paid to the lord on his admittance a fine certain of £——, and his fealty was respited (*c*).

To use of purchaser.

Admittance.

[*Add statement as to value*, ut ante, *p.* 317, *if appropriate.*]

Taken the day and year first above written by me } A., Steward [*or*, Deputy Steward].

[*Receipt for purchase-money, see note* (*b*), *last page.*]

VII. DEED *of* COVENANTS *for* TITLE *to accompany* SURRENDER *on* SALE *of* COPYHOLDS (*d*).

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the vendor lately agreed to sell to the purchaser the hereditaments hereinafter recited to

Parties.

Recitals: of agreement for sale;

(*c*) The above precedent is here inserted, both for purposes of reference, and also in case a purchaser's solicitor should be called upon to prepare such an instrument. This is, however, very seldom the case, as surrenders are generally prepared by the stewards of the manors, and follow the form prescribed by the usage of the particular manor.

Surrenders, by whom prepared.

(*d*) The statutory covenants for title are implied only where property is conveyed by *deed*. Unless, therefore, the surrender is preceded by a deed of covenant to surrender, in which these covenants can be incorporated by implication (see Precedent V., *ante*, p. 322), there should be a deed to accompany the surrender, containing express covenants for title.

Covenants for title to copyholds.

(*e*) This deed will require a stamp of 10*s*.

Stamp.

have been surrendered for the sum of £——; AND WHEREAS for effectuating the said sale in consideration of the sum of £—— this day paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor has this day surrendered out of Court into the hands of the lord of the manor of ——, in the county of ——, by the acceptance of [*steward*], of, &c., the steward of the said manor, according to the custom thereof, ALL THAT [*describe parcels from the court rolls*], to the use of the purchaser, his heirs and assigns, for ever; AND thereupon the purchaser has been admitted tenant of the same premises to hold the same unto the purchaser, his heirs and assigns, according to the custom of the said manor, at and under the rents, fines, suits, and services therefor due and of right accustomed: NOW THIS INDENTURE WITNESSETH that, in consideration of the premises, the vendor hereby covenants with the purchaser that, notwithstanding anything heretofore done, omitted, or knowingly suffered by him, the vendor [or any of his ancestors or testators], he, the vendor, has good right and power to surrender all and singular the premises so surrendered as aforesaid in manner hereinbefore recited: AND that [*covenants for quiet enjoyment, free from incumbrances, and for further assurance, as in Appendix A. or B.* (post, *p.* 662), *as the case may require, substituting the word* "surrendered" *for* "conveyed" *throughout*].

IN WITNESS, &c.

VII. DEED OF COVENANTS FOR TITLE TO COPYHOLDS.

of surrender and admittance of purchaser.

Testatum.

Covenants for title.

VIII. ASSIGNMENT *of* LEASEHOLD HOUSE, *&c. to a* PURCHASER. VARIATIONS *where no* MONEY *is* PAID.

THIS INDENTURE (*f*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS by an indenture of lease dated the —— day of ——, and made between [*parties*], ALL THAT messuage or dwelling-house, with the coach-house, stables,

Parties.

Recitals: of lease.

Parcels: house with stables, gardens, &c.

(*f*) Stamp, *ad valorem* as on a conveyance on sale (see Preliminary Note, *ante*, p. 307), where a premium or valuable consideration is paid; otherwise, a stamp of 10*s*. In the latter case the words "assignor" and "assignee" should be used throughout for the words "vendor" and "purchaser" in the text.

VIII. ASSIGNMENT OF LEASEHOLDS.

offices, outbuildings, yard, and garden thereunto belonging, situate and being No. — in —— Street, and on the east side thereof, in the parish of ——, in the county of ——, and containing by admeasurement the dimensions following, that is to say, in width on the west side thereof, fronting on —— Street aforesaid, —— feet, and in rear thereof —— feet, and in depth on the north side thereof —— feet, and on the south side thereof —— feet, with the appurtenances, were demised unto the lessee for the term of —— years, from the —— day of ——, at the yearly rent of ——, and subject to the covenants on the lessee's part and conditions therein contained (*g*): AND WHEREAS under or by virtue of certain mesne assignments and acts in the law, and ultimately by an indenture of assignment, dated, &c., and made between [*parties*], the premises comprised in the hereinbefore recited indenture of lease have become, and are now vested in, the vendor for the unexpired residue of the said term: AND WHEREAS the vendor has agreed to sell to the purchaser the said premises for the sum of £—— (*i*). NOW THIS INDENTURE WITNESSETH as follows:—

of mesne assignments;

of agreement for sale (*h*).

Testatum.

Assignment of leaseholds.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the

(*g*) If the lessor's consent is required, it may be given by making him a party to the assignment (as in the next precedent), or it may be given by a separate instrument, which is the more usual practice: for a form of such consent, see *post*, p. 476. The clause in the lease requiring the lessor's consent to assignment should be recited as follows:—

"And in the indenture now in recital was contained a covenant against assignment of the premises therein comprised, or any part thereof, without the licence in writing of the said [*lessor*], his executors, administrators, or assigns."

(*h*) If there is no money payment, for the recital of agreement for sale substitute the following recital:—

"AND WHEREAS the assignor has agreed to assign to the assignee the said premises in consideration of the covenants by the assignee hereinafter contained."

(*i*) If the licence to assign is given by a separate instrument, recite here:—

"AND WHEREAS the said [*lessor*] has given his licence in writing to the assignment hereby intended to be made by an instrument, dated, &c."

receipt whereof is hereby acknowledged) (*k*), the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL and singular the premises comprised in or expressed to be demised by the said indenture of lease, TO HOLD the said premises unto the purchaser for all the residue now unexpired of the said term of —— years, SUBJECT nevertheless to the payment of the rent reserved by and the performance and observance of the covenants on the lessee's part, and conditions contained in the said indenture of lease.

Parcels.

Habendum.

Subject to payment of rent and performance of covenants, &c.

2. The purchaser, for himself and his assigns (*m*), hereby covenants with the vendor that he, the purchaser, his executors, administrators, or assigns, will from time to time pay the rent reserved by and perform and observe the covenants on the lessee's part and conditions contained in the said indenture of lease, and will at all times hereafter keep indemnified the vendor, his heirs, executors, administrators, and assigns, from all actions, proceedings, costs, damages, expenses, claims, and demands for or in respect of the non-payment of the said rent, or any part thereof, or the breach, non-performance, or non-observance of the said covenants and conditions or any of them.

Covenant by purchaser to pay rent and perform lessee's covenants, &c. in lease (*l*).

[*Add statement as to value, if appropriate, see* ante, *p.* 317.]

IN WITNESS, &c.

(*k*) If there is no money payment for the assignment, say—"in consideration of the covenants by the assignee hereinafter contained."

(*l*) As to the liability of an assignee of a lease to indemnify the original lessee against breaches of covenants in the lease irrespective of express covenant with the lessee, see *Moule* v. *Garrett*, L. R. 7 Ex. 101; but as to an underlessee, see *Bonner* v. *Tottenham, &c. Building Soc.*, [1899] 1 Q. B. 161. The object of this covenant is merely to indemnify the assignor: see *Harris* v. *Boots*, [1904] 2 Ch. 376. See also, as to construction of this covenant, *Gooch* v. *Clutterbuck*, [1899] 2 Q. B. 148.

(*m*) These words are introduced that the covenant may run with the land.

IX. ASSIGNMENT OF LEASEHOLDS BY INDORSEMENT, &c.

IX. ASSIGNMENT *of* Leaseholds, *by* Deed Indorsed *on the* Lease, *where the* Lessor concurs *to give* Consent *to the* Assignment. Variations *in* Notes *where the* Assignment *is by* Supplemental Deed.

Parties. THIS INDENTURE (*n*), made the —— day of ——, 19—, Between the within named [*vendor*] (hereinafter called "the vendor"), of the first part; the within named [*lessor*] (hereinafter called "the lessor"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part (*o*):

Recitals. [Whereas the vendor has agreed to sell to the purchaser the premises comprised in the within written (*p*) indenture for the sum of £——: And whereas the lessor has consented to join in these presents for the purpose and in manner hereinafter

Testatum. appearing: NOW THIS INDENTURE] WITNESSETH, as follows:—

Assignment. 1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the vendor to the purchaser (the receipt whereof is hereby acknowledged), the vendor, with the licence and consent (*q*) of the lessor hereby testified, hereby, as beneficial owner, assigns unto the purchaser, All and singular the premises comprised in, or expressed to be demised by the within

Habendum. written (*p*) indenture of lease, with the appurtenances, To hold the same unto the purchaser for all the residue now unexpired of the within mentioned term of —— years (*r*), subject to the pay-

---

(*n*) Stamp: see last precedent, p. 325, note (*f*).

Variations. (*o*) If, instead of indorsing the assignment of the lease, it is made by a separate instrument and treated as supplemental to the lease (see sect. 53 of the Conveyancing Act, 1881), the parties will be described as in an ordinary deed, and after the names of the parties the following words may be added:—

"And to be read as supplemental to an indenture of lease (hereinafter referred to as 'the principal indenture'), dated, &c."

Or, if the deed is intended to be actually annexed to the lease, the reference thereto may be to "the above written indenture."

(*p*) *Or*, "principal."

(*q*) The licence will "extend only to the permission actually given": see stat. 22 & 23 Vict. c. 35, s. 1; and 23 & 24 Vict. c. 38, s. 6.

(*r*) *Or*, "the term of —— years mentioned in the principal indenture."

ment of the rent reserved by and the performance and observance of the covenants on the lessee's part, and conditions contained in the within written (*s*) indenture.

2. [*Covenant by purchaser to pay rent, &c., and indemnify the vendor, as in last precedent.*]

[*Add statement as to value, if appropriate, see* ante, *p.* 317.]

IN WITNESS, &c.

X. ASSIGNMENT *of* LEASE *of a* MESSUAGE *and certain* SCHEDULED FIXTURES (*t*), *&c.*, SUBJECT *to* UNDERLEASE *of* PART *of the* PREMISES, *in* CONSIDERATION *of the* ASSIGNEE *taking upon himself the* RENT *and* COVENANTS, *by* INDORSEMENT.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN the within named [*assignor*], of the one part, and [*assignee*], of, &c., of the other part, WITNESSETH, that in consideration of the covenants on the part of the said [*assignee*] hereinafter contained, the said [*assignor*] hereby, as beneficial owner (*u*), assigns unto the said [*assignee*] ALL and singular the messuage or tenement and premises demised by the within written

Parties.

Testatum.

Assignment.

(*s*) *Or,* "principal."

(*t*) A deed of assignment is not necessary to confer a title to personal chattels. Sect. 58 of the Stamp Act, 1891, only allows apportionment of the consideration for stamp duty where the property is conveyed in separate parcels by different instruments, the fixtures and other personal chattels should therefore be excluded from the assignment where a large pecuniary consideration is paid for them, so as to avoid the extra *ad valorem* stamp duty. On a purchase under the authority of a special Act, *ad valorem* duty for the whole consideration must be paid: see Finance Act, 1895, s. 12; *Eastbourne Corporation* v. *A.-G.*, [1904] A. C. 155. In the present case the assignment of the lease without the fixtures, &c. would bear a stamp of 10*s.*; but if the fixtures are added, the stamp should be adjudicated.

As to the transfer of personal chattels.

Stamp.

(*u*) The insertion of the words "as beneficial owner" seems advisable, although covenants for title are obviously less important in the case of an assignment of a lease at a rack rent than where the lease is valuable. The covenants by the assignee would be sufficient to make the assignment a conveyance for "valuable consideration" within the meaning of sect. 7 (1) (B.) of the C. Act, 1881: see *Currie* v. *Misa*, L. R. 10 Ex. at p. 162.

X. ASSIGNMENT OF LEASE AND FIXTURES SUBJECT TO UNDERLEASE BY INDORSEMENT.

indenture of lease, with their appurtenances, and also ALL THOSE the household goods, tenant's fixtures, chattels, and effects particularly mentioned in the schedule hereto. TO HOLD the said messuage or tenement, with the appurtenances, unto the said [*assignee*], for all the remainder now unexpired of the term of twenty years and one quarter of another year, wanting fourteen days, granted by the within written indenture of lease; SUBJECT nevertheless to the payment of the rent and performance of the covenants respectively by and in the same indenture of lease reserved and contained on the lessee's part henceforth to be paid and performed; AND subject also to and with the benefit of a certain underlease of the shop and room to the rear of the same and basement, being part of the said messuage or tenement and premises, granted by the said [*assignor*] to [*underlessee*], of, &c., by an indenture, dated the —— day of —— now last past, for the term of seven years from the —— day of —— then instant, at the yearly rent of £——. AND TO HOLD the said goods, tenant's fixtures, chattels, and effects, unto the said [*assignee*] absolutely, subject nevertheless to the right and interest of the said [*underlessee*] in such of the said goods, tenant's fixtures, chattels, and effects as are mentioned in a schedule to the said indenture of lease of the —— day of —— last, AND the said [*assignee*] hereby covenants with the said [*assignor*] [*covenant to pay rent and perform covenants of lease*, ut ante, *p.* 327, *substituting* "the said [*assignee*]" *for* "the purchaser," *and* "the said [*assignor*]" *for* "the vendor"].

Habendum as to messuage.

Subject to an underlease.

Habendum as to fixtures.

Covenants by assignee to pay rent, &c.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XI. ASSIGNMENT *of* PART *of the* PREMISES *comprised in a* LEASE (*the* REMAINDER *being* RETAINED *by the* VENDOR). MUTUAL COVENANTS *by* VENDOR *and* PURCHASER *to* PAY *their respective* PROPORTIONS *of* RENT, *&c.*; CROSS POWERS *of* ENTRY (*v*). ACKNOWLEDGMENT *of* RIGHT *to* PRODUCTION *and* UNDERTAKING *for* SAFE CUSTODY *of* LEASE; COVENANT *by* PURCHASER NOT *to* ERECT BUILDINGS.

XI. ASSIGNMENT OF PART OF THE PREMISES COMPRISED IN A LEASE.

THIS INDENTURE (*x*), made the —— day of ——, 19—, BETWEEN *vendor*, of, &c. (hereinafter called "the vendor"), of the one part, and *purchaser*, of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS *recite lease of a messuage and stable*, ut ante, *p.* 325]: AND WHEREAS the purchaser has contracted with the vendor for the purchase of the said stable, for the residue of the said term, at the price of £——; AND upon the treaty for the said purchase it was agreed that the purchaser, his executors, administrators, and assigns, should pay the yearly rent of £ - -, in respect of the said stable, as his proportion of the said yearly rent of £ - -, and that the residue of the said yearly rent of £—— should be paid by the vendor, his executors, administrators, and assigns, in respect of the said messuage and premises not hereby assigned, and that the said parties respectively should enter into the several covenants and agreements hereinafter contained. NOW THIS INDENTURE WITNESSETH as follows:—

Parties.

Recitals: of lease; of contract for purchase; of agreement to apportion rent.

Testatum.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL THAT the said stable hereinbefore described and comprised in and demised by the hereinbefore recited indenture of lease, with the appurtenances, which same premises are now in the occupation of the pur-

Assignment.

Parcels.

(*v*) Cross powers of distress by way of indemnity were formerly given in an assignment of this kind, but are now invalidated by the Bills of Sale Act, 1882, and should not be inserted. The powers of entry must be kept within the limit of the rule against perpetuities.

As to power of distress.

(*x*) Stamp: see *ante*, p. 325, note (*f*). The statement as to value, if appropriate, should be added at the end of the deed: see *ante*, p. 317.

XI. ASSIGNMENT OF PART OF THE PREMISES COMPRISED IN A LEASE.

chaser (*y*); TOGETHER with all the benefit and advantage of the said indenture of lease, and of the lessor's covenants therein contained, so far as the same relate to or concern the said stable and premises hereby conveyed (*z*): To HOLD all the premises hereby assigned unto the purchaser henceforth, during all the remainder now unexpired of the said term of——years, subject, nevertheless, to the payment of the said yearly rent of £—— quarterly to the said [*lessor*], his heirs or assigns, on or at the days and times and in the manner on, at, and in which the whole rent reserved by the said indenture of lease is made payable; AND ALSO subject to the covenants and conditions contained in the said indenture of lease, and which, so far only as relate to the said stable and premises hereby assigned with their appurtenances, are henceforth (*a*) to be observed and performed; [AND subject also to a certain indenture of underlease, dated, &c., and made, &c., whereby a part of the premises were demised by the vendor to [*underlessee*] for the term of —— years, from the —— day of ——, 19—, at the yearly rent of £——].

Habendum.

Subject to proportion of rents and covenants.

Covenants by vendor and purchaser; to pay apportioned rent.

2. Each of them, the vendor and purchaser, for himself and his assigns, hereby covenants with the other of them that he, the covenanting party, his executors, administrators, or assigns, will henceforth (*b*) pay the apportioned part of the said yearly rent of £——, so agreed to be paid by him and them as hereinbefore recited, and perform and observe the covenants, conditions, and

---

Reference to underlease.

(*y*) If an underlease has been granted by the vendor, it should be noticed here, thus:—

"in the occupation of [*underlessee*] under the underlease of the same premises hereinafter mentioned."

If so mentioned, it will be excepted out of the implied covenant against incumbrances.

(*z*) If there has been an underlease, add—

"and the benefit of the underlease hereinafter mentioned."

(*a*) *Or*, "from the —— day of —— last." *Or*, "from the —— day of —— next."

(*b*) *Or*, "from the —— day of —— next." *Or*, "from the —— day of —— last, and at all times thereafter."

The covenant that the lease is valid and that the rents have been paid, and covenants performed up to the date of the assignment, are implied by statute: see Conveyancing Act, 1881, s. 7 (1) (B.).

XI. ASSIGNMENT OF PART OF THE PREMISES COMPRISED IN A LEASE.

agreements (other than the covenant for payment of the entire rent) in the said indenture of lease contained, and on the part of the lessee to be performed and observed, so far only as the same relate to his or their portion of said demised premises; AND will at all times keep indemnified the other of them, the said vendor and purchaser, his heirs, executors, administrators, and assigns, from all actions, proceedings, costs, charges, damages, and expenses whatsoever, by reason of the non-payment of such apportioned part of the said rent, or the non-performance or non-observance of any of such covenants, conditions, and agreements contained in the said indenture of lease, so far as the same relate to or concern his (the covenanting party's) portion of the demised premises; AND FURTHER, that if and when either of them, the vendor and purchaser, or his executors, administrators, and assigns, shall be required to pay the apportioned part of the said rent, which ought hereunder to be paid by the other of them, or his executors, administrators, or assigns (hereinafter referred to as "the defaulter or defaulters"), or any part thereof, or shall incur any costs, damages, or expenses by reason or on account of the non-payment of such rent, or the non-performance or non-observance of such covenants, conditions, or agreements, as aforesaid, so far as the same relate to the defaulter's portion of the demised premises, then it shall be lawful for the person or persons making such payment or incurring such costs, damages, or expenses, to enter into and upon such last mentioned portion of the premises, or any part thereof, and remain in the possession or receipt of the rents and profits thereof until he or they shall have reimbursed himself and themselves any costs, damages, and expenses which he or they may have incurred or sustained by or on account of any such non-payment, non-performance, or non-observance as aforesaid: [PROVIDED ALWAYS that the said respective powers of entry and receipt of profits shall be restricted to the life of the survivor of the issue now living of Her late Majesty Queen Victoria, and twenty-one years after the death of such survivor, and such further period for which such powers may lawfully be given (*c*)].

and indemnify purchaser therefrom.

Power of entry.

Restriction of power of entry.

(*c*) This proviso is inserted, where the term has more than twenty-one years to run, to meet the doubt as to whether if not so restricted the power of entry might not be obnoxious to the rule as to perpetuities.

XI. ASSIGNMENT OF PART OF THE PREMISES COMPRISED IN A LEASE.

Moneys, &c. indemnified against made a charge on the premises of the defaulter.

3. It is hereby agreed that all moneys which may become payable [during the life of such survivor as aforesaid] under the respective covenants for indemnity hereinbefore contained shall be a charge on the portion of the premises belonging to the defaulter or defaulters, and shall be recoverable accordingly by sale or other means available under the Conveyancing Act, 1881, or otherwise.

Acknowledgment and undertaking as to lease.

4. The vendor hereby acknowledges the right of the purchaser to production of the said indenture of lease, and delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

Not to erect buildings so as to obstruct the light of the assignor's dwelling-house.

5. And the purchaser, for himself and his assigns, hereby covenants with the vendor that he, the purchaser, his executors, administrators, or assigns will not at any time hereafter, during the residue of the said term of —— years, make, erect, or set up any buildings, wall, partitions, or other erections on the premises hereby assigned, so as to obstruct or diminish the light or air of the said dwelling-house and premises not hereby assigned, as the same light and air are now enjoyed by the occupiers thereof, or so as to raise the height or widen the ground plan of the said stable hereby assigned, or any part thereof.

In witness, &c.

XII. CONVEYANCE *by an* Absolute Owner *to a* Purchaser *of* Freeholds, Copyholds, *and* Leaseholds.

Parties.

THIS INDENTURE (*d*), made the —— day of ——, 19—, Between [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: Whereas the vendor is seised of, or entitled to the several messuages, lands, and hereditaments described in the first schedule hereto in fee simple in possession;

Recitals: of vendor's title: to freeholds:

(*d*) Presumably the consideration will be more than 500*l*., in which case the stamp duty will be 10*s*. for every 50*l*. or part of 50*l*. of the purchase-money: see *ante*, p. 307. The purchase-money must be apportioned as between the freeholds and leaseholds on the one hand, and the copyholds on the other, for the purpose of the Stamp Act, 1891, s. 61, as the surrender will bear the *ad valorem* stamp for the copyholds, and the conveyance will be stamped with a further stamp of 10*s*. in respect of the covenants to surrender the copyholds.

AND is also seised of, or entitled to the lands and hereditaments described in the second schedule hereto, to him and his heirs, according to the customs of the several manors mentioned in the same schedule, whereof such last mentioned lands and hereditaments are respectively holden, and subject to the rents and services therefor due and of right accustomed respectively; AND is also possessed of, or entitled to the several messuages and lands described in the third schedule hereto, for the residues of the several terms therein respectively created by the several leases, which, and the mesne assignments whereof respectively are also mentioned in such last mentioned schedule, and are therein set opposite to the properties to which such leases and assignments relate respectively, and at the yearly rents therein mentioned respectively: AND WHEREAS the vendor has agreed with the purchaser for the sale to him of all the said messuages, lands, and hereditaments, at the price of £——: AND WHEREAS it has been agreed that for the purpose of the Stamp Act, 1891, the sum of £——, part of the said purchase-money, shall be the consideration for the said copyhold hereditaments, and that the sum of £—— residue thereof shall be the consideration for the said freehold and leasehold hereditaments: NOW THIS INDENTURE WITNESSETH as follows:—

to copyholds;

to leaseholds;

of agreement for sale.

Apportionment of stamp duty.

First *testatum*.

1. In pursuance of the said agreement, and in consideration of the sum of £——, being the apportioned part of the said purchase-money for the said freehold and leasehold hereditaments, now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THAT and those the mansion house called —— Hall, with the gardens, pleasure grounds, and park thereto belonging, and the several messuages or dwelling-houses, lands, and hereditaments situate in the parishes of —— and ——, in the county of ——, and particularly described in the first schedule hereto, and delineated with the abuttals thereof in the map or plan drawn on the —— skin of these presents, and therein coloured ——, but so that in case there shall be any variance or discrepancy between the said plan and the verbal description hereinbefore, or in the said schedule thereto contained, such verbal description shall prevail, and shall not be governed, restricted, or enlarged by the said plan: TO HOLD the same unto and to the use of the purchaser, his heirs and assigns.

Grant of freeholds.

Parcels.

XII. OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

Second *testatum.*

Covenant to surrender copyholds.

2. In consideration of the sum of £—— being the apportioned part of the said purchase-money for the said copyhold hereditaments now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, covenants with the purchaser that he, the vendor, or his heirs, will forthwith, at the cost of the purchaser, his heirs or assigns, surrender into the hands of the several lords or ladies of the manors of which the same are respectively holden, and according to the several customs of such manors respectively, ALL THOSE messuages, lands, and hereditaments situate in the parishes of —— and —— aforesaid, and particularly described in the second schedule hereto and delineated, with the abuttals thereof, in the said map or plan, and therein coloured ——: To the use of the purchaser, his heirs and assigns, according to the several customs of the said manors, and at and under the several rents, fines, suits, and services therefor due and of right accustomed respectively.

Parcels.

Declaration of trust till surrender.

3. The vendor hereby declares that until the said last mentioned hereditaments shall be so surrendered as aforesaid, he, the vendor, and his heirs, will stand possessed thereof in trust for the purchaser, his heirs and assigns.

Third *testatum.*

Assignment of leaseholds.

4. In consideration of the said sum of £—— so paid as aforesaid (*e*), the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL THOSE the several messuages and pieces or parcels of land situate in the parishes of —— and —— aforesaid, particularly described in the third schedule hereto and delineated, with the abuttals thereof, in the said map or plan, and therein coloured ——, TO HOLD all the premises hereby assigned unto the purchaser for the residues of the several terms therein respectively created by the several indentures of lease, which in the said third schedule hereto are respectively set opposite to the properties to which the same respectively relate, subject to the several rents and covenants on the part of the lessees, and to the conditions reserved by and contained in the said leases respectively.

Covenant by purchaser to pay rents.

5. The purchaser hereby, for himself and his assigns, covenants with the vendor that he, the purchaser, his heirs, executors, administrators, or assigns, will from time to time pay the respective

(*e*) This will be the consideration apportioned for the freeholds and leaseholds: see first *testatum*.

rents reserved by, and perform and observe the respective covenants on the part of the respective lessees and conditions contained in the said several indentures of lease, and will at all times hereafter keep indemnified the vendor, his heirs, executors, administrators, and assigns, from and against all actions, proceedings, costs, damages, expenses, claims, and demands, for or in respect of the non-payment of the said respective rents or any of them, or any parts thereof respectively, or the breach, non-performance, or non-observance of the said respective covenants and conditions, or any of them.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

The Third Schedule above referred to.

XIII. SURRENDER *of a* Lease *by way of* Sale *to the* Reversioner *in* Fee. (*By* Indorsement *on the* Lease.)

THIS INDENTURE (*f*), made the —— day of ——, 19—, Between the within named [*lessee*], of the one part, and [*reversioner*], of, &c., of the other part: Whereas by an indenture, dated, &c., and made between the within named [*lessor*], of the one part, and the said [*reversioner*], of the other part, for the consideration therein mentioned, the premises demised by the within written indenture were (with other hereditaments) conveyed and assured to the use of the said [*reversioner*], his heirs and assigns, subject, nevertheless, as to the premises demised by the within written indenture, to the term of —— years thereby created: And whereas the said [*reversioner*] has agreed with the said [*lessee*] for the purchase of the estate and interest of the said [*lessee*], of and in the said premises, for the residue of the said term, to the intent that the same term may be merged and extinguished in manner hereinafter appearing, for the price of £——: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the said [*lessee*] by the said [*reversioner*]

Parties.

Recitals: of conveyance of freehold reversion;

of agreement for purchase of lessee's interest.

Testatum.

(*f*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

XIII. SURRENDER OF LEASE TO REVERSIONER.

(the receipt whereof is hereby acknowledged), the said *lessee* hereby, as beneficial owner, surrenders and assigns unto the said [*reversioner*], his heirs and assigns, ALL and singular the messuage, hereditaments, and premises comprised in and demised by the within written indenture, to the intent that the said term of —— years created by the within written indenture may be merged and absolutely extinguished in the freehold reversion and inheritance of the same premises. [AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, the said [*lessee*] hereby releases and discharges the said [*reversioner*] from the several covenants for, &c. [*specify any particular covenants*], and from all other covenants and conditions contained in the within written indenture, and on the part of the lessor to be performed or observed, and from all actions, proceedings, costs, charges, damages, expenses, claims and demands, for or in respect of the said covenants and conditions, or any of them, or for or in respect of any provision, matter, or thing, contained or mentioned in the within written indenture.]

Second *testatum.*

Release of lessor's covenants (*g*).

[*Add statement as to value if appropriate, see* ante, *p.* 317.]

IN WITNESS, &c.

XIV. CONVEYANCE *by* COPARCENERS *to a* PURCHASER.

THIS INDENTURE (*h*), made the —— day of ——, 19—,

Parties. BETWEEN [*first coparcener*] the wife of [*husband*], of, &c., of the first part; [*other coparcener*], of, &c., spinster, of the second part:

Recitals: and [*purchaser*], of, &c., of the third part: WHEREAS [*ancestor*], late of, &c., being seised of or entitled to the lands and heredita-

(*g*) The second *testatum* will, of course, only be necessary where there are covenants on the part of the lessor for renewal of the lease or otherwise, besides the usual covenant for quiet enjoyment. Any *past* breaches of the lessee's covenants should be expressly released as in the text, *mutatis mutandis*, or by a separate instrument. All rent up to the surrender will be recoverable on the covenant to pay rent: see Apportionment Act, 1870 (33 & 34 Vict. c. 35); and *A.-G.* v. *Cox*, 3 H. L. C. 240; *Swansea Bank* v. *Thomas*, 4 Ex. D. 94; *Re South Kensington Co-operative Stores*, 17 Ch. D. 161; followed in *Bish. of Rochester* v. *Le Fanu*, [1906] 2 Ch. 513.

(*h*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307. It is assumed that the married coparcener was married, or has acquired her interest, since the Married Women's Property Act, 1882: see *post*, p. 383, note (*c*).

XIV. IN FEE BY CO-PARCENERS.

ments hereby assured, died on the —— day of ——, intestate, leaving the said [*coparceners*] his only children him surviving: [AND WHEREAS [*administrator*], the administrator of the said [*ancestor*], deceased, by an indenture dated, &c., and made, &c., conveyed the said hereditaments hereby assured to the said [*first coparcener*] and [*other coparcener*] in fee simple in possession, free from incumbrances as coparceners.] AND WHEREAS the said [*coparceners*] have agreed with the said [*purchaser*] for the sale to him of the said lands and hereditaments in fee simple in possession, free from incumbrances, at the price of £——: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— [*one-half of the purchase-money*] now paid to the said [*first coparcener*] by the said [*purchaser*] (of which sum of £—— the said [*first coparcener*] hereby acknowledges the receipt), and of the sum of £—— [*remainder of the purchase-money*] now paid to the said [*other coparcener*] by the said [*purchaser*] (of which sum of £—— the said [*other coparcener*] hereby acknowledges the receipt), they the said [*first coparcener*] and [*other coparcener*] hereby, as beneficial owners, grant, and each of them as beneficial owner grants, unto the said [*purchaser*], ALL THAT [*describe parcels*], TO HOLD all the premises unto and to the use of the said [*purchaser*], his heirs and assigns.

of title of vendors; conveyance to co-parceners to administrators (*i*). of agreement for sale. *Testatum.*

[*Add statement as to value if appropriate, see* ante, *p.* 317.]

IN WITNESS, &c.

XV. CONVEYANCE *by* TENANTS *in* COMMON *absolutely entitled in* MOIETIES *in* FEE SIMPLE. (SIMPLE FORM.)

THIS INDENTURE (*j*), made the —— day of ——, 19—, BETWEEN [*first tenant in common*], of, &c., of the first part; Parties.

(*i*) If the intestate died after the Land Transfer Act, 1897, either an assent to the devise or a conveyance to the co-heiresses under sect. 3 (1) of the Act would be necessary: see Preliminary Note, *ante*, p. 314; and a recital of such conveyance (if any) should be inserted here; or, if no such conveyance or assent by a separate instrument has been executed, the administrator should join in the conveyance to assent to the payment of the purchase-money to the co-heiresses and to grant and release the property to the purchaser, as in Precedent III., *ante*, p. 319.

(*j*) Stamp, *ad valorem*: see Preliminary Note, *ante*, p. 307.

XV. IN FEE BY TENANTS IN COMMON.

[*second tenant in common*], of, &c., of the second part; and [*purchaser*], of, &c., of the third part: WHEREAS the said [*first tenant in common*] and [*second tenant in common*] are seised of the hereditaments hereby assured in fee simple in possession, free from incumbrances, as tenants in common in equal shares: AND WHEREAS the said [*first tenant in common*] and [*second tenant in common*], according to their respective estates and interests, have agreed with the said [*purchaser*] for the sale to him of the entirety of the said hereditaments in fee simple in possession for the sum of 1,500*l.*: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of 1,500*l.* now paid by the said [*purchaser*], as to the sum of 750*l.*, being one equal moiety thereof, to the said [*first tenant in common*], and as to the like sum of 750*l.*, being the remainder thereof, to the said [*second tenant in common*] (the receipt whereof they, the said [*first tenant in common*] and [*second tenant in common*], hereby respectively acknowledge (*l*)), they, the said [*first tenant in common*] and [*second tenant in common*] respectively, as beneficial owners, according to their respective shares, estates, and interest, hereby grant unto the said [*purchaser*], ALL THAT, &c., To HOLD all the premises unto and to the use of the said [*purchaser*], his heirs and assigns.

Recitals: of seisin (*k*).

Testatum.

Parcels; dwelling-house, &c.

[*Add statement as to value if appropriate, see* ante, *p.* 317.]

IN WITNESS, &c.

XVI. CONVEYANCE *of* FREEHOLDS *by* TENANTS *in* COMMON *having* VARIOUS INTERESTS.

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [Peter Smith], of, &c., of the first part; [E. F.], of, &c.,

Parties.

(*k*) If the devolution of the vendors' title is recited, it should be carried back to the last point at which the whole property was held by the same person, but a simple recital of seisin of the vendors is sufficient.

(*l*) Where the vendors are absolutely entitled the purchase-money may be paid to them on their joint receipt as in the text; but if one or more of the tenants in common are trustees the purchase-money must be apportioned and receipts for the respective shares should be expressed in the deed: see next precedent.

(*m*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

of the second part; [John Jones], of, &c., and [Richard Jones], of, &c., of the third part; [L. M.], of, &c., and [N. O.], of, &c., of the fourth part; [Thomas Smith], of, &c., of the fifth part; and [*purchaser*], of, &c., of the sixth part.

Recitals: will of testator;

WHEREAS Joshua Smith, late of ——, deceased, by his will, dated the —— day of ——, after appointing [A. B.] and [C. D.] executors thereof, devised all his real estate to such of his children as should attain the age of twenty-one years in equal shares as tenants in common in fee. AND WHEREAS the testator died on the —— day of —— without having revoked or altered his said will, and the same was proved in the Principal Probate Registry on the —— day of —— by the executors named therein. AND WHEREAS the testator left issue four children, and no more, namely, the said Peter Smith and Robert Smith and Samuel Smith and the said Thomas Smith, all of whom attained the age of twenty-one years. AND WHEREAS the said Joshua Smith was at his death seised of the hereditaments hereby assured for an estate in fee simple in possession, free from incumbrances. AND WHEREAS the said Robert Smith died on the —— day of —— without having revoked or altered his will, dated the —— day of ——, whereby he appointed the said [E. F.] executor thereof, and charged his real estate with the payment of his debts (*n*): AND the said last mentioned will was proved by the said E. F. in the Principal [—— District] Probate Registry on the —— day of ——. AND WHEREAS by his will dated —— day of ——, the said Samuel Smith appointed [G. H.] and [I. K.] executors thereof, and devised all his real estate to the said John Jones during his life, with remainder to the said Richard Jones in fee simple. AND WHEREAS [*recite death of Samuel Smith and probate of his will*]. AND WHEREAS the said G. H. and I. K., by writing under their hands dated the —— day of ——, have assented to the devise of his real estate so made by the said Samuel Smith as aforesaid (*o*). AND WHEREAS by an indenture of settlement dated the —— day of ——, and made between, &c. (being the settlement made in contemplation of the marriage shortly afterwards solemnized

issue of testator.

Seisin of testator.

Death of a devisee, will and probate.

Will of another devisee.

Death and probate.

Assent of executors to the devise.

Settlement of a share.

(*n*) It is assumed that this testator died before the L. T. Act, 1897, otherwise it would be unnecessary to mention the charge of debts on the real estate.

(*o*) See Land Transfer Act, 1897, Part I., *ante*, Preliminary Note, p. 313.

XVI. OF FREEHOLDS BY TENANTS IN COMMON.

between the said Thomas Smith and Jane Smith), the said Thomas Smith conveyed all his share of (amongst other hereditaments) the hereditaments hereby assured unto and to the use of the said [L. M.] and [N. O.] upon trust for sale with the consent in writing of the said Thomas Smith during his life. AND WHEREAS the parties hereto of the first four parts by virtue of their respective estates, powers, and interest have respectively agreed with the said [*purchaser*] for the sale to him of the entirety of the hereditaments hereby assured in fee simple in possession for the sum of £——.

Agreement for sale.

Testatum. NOW THIS INDENTURE WITNESSETH as follows:—

Consideration. 1. In pursuance of the said agreement and in consideration of the sum of £—— now paid by the said [*purchaser*] in manner following, that is to say, the sum of £—— being one-fourth part thereof, to the said Peter Smith, the like sum of £—— to the said [E. F.], as such executor as aforesaid, the like sum of £—— to the said John Jones and Richard Jones, and the like sum of £—— to the said [L. M.] and [N. O.], with the consent of the said Thomas Smith (the receipt of which said several sums of £—— each so paid to them respectively as aforesaid, the said respective parties hereto of the first, second, third, and fourth parts do hereby respectively acknowledge), the said Peter Smith, John Jones and Richard Jones, as beneficial owners according to their respective shares, estates, interests, and powers in and over the hereditaments hereby assured, do hereby grant and the said [E. F.], as personal representative of the said Robert Smith, as to one equal fourth part of the said hereditaments, and in exercise of every power or authority in that behalf vested in him, doth hereby appoint and convey, and the said [L. M.] and [N. O.], as trustees of the said indenture of settlement, as to one equal fourth part of the same hereditaments, and with the consent (hereby testified) of the said Thomas Smith, do hereby grant and all the said parties hereto of the first five parts as to all other (if any) the shares, estates, or interests of or in the said hereditaments which they have respective power to convey or dispose of, do hereby respectively grant, appoint and convey unto the said [*purchaser*], ALL THAT, &c. [*describe the parcels*], TO HOLD the same unto and to the use of the said [*purchaser*], his heirs and assigns.

Grant.

Covenant to

2. The said Richard Jones hereby covenants with the said

[*purchaser*], and his assigns, that he the said Richard Jones will, as soon as any duty or duties shall become payable on the death of the said John Jones in respect of the hereditaments hereby assured, pay and discharge the same, and will at all times keep the said [*purchaser*], his heirs, executors, administrators, and assigns, indemnified against the same and every part thereof, and against all actions, proceedings, costs, charges, claims, and demands in respect thereof.

XVI. OF FREEHOLDS BY TENANTS IN COMMON.

pay death duties (*z*).

3. It is hereby agreed and declared that the covenants for the title to and further assurance of the said hereditaments hereby assured, which are implied by the conveyance hereby made on the part of the said Peter Smith, John Jones, and Richard Jones, shall be limited as follows:—As to the covenants of the said Peter Smith to one equal fourth part of the said hereditaments, and as to the covenants of the said John Jones to the estate for his life in one equal fourth part thereof, and as to the covenants of the said Richard Jones to the reversion or remainder in fee simple expectant on the death of the said John Jones in the same one equal fourth part thereof, and the covenants of the said [E. F.] and of the said [L. M.] and [N. O.] respectively to one equal fourth part thereof.

Restriction of implied covenants for title.

[*Add statement as to value if appropriate, see* ante, *p.* 317.]

In witness, &c.

XVII. CONVEYANCE *by* Partners *of* Freeholds *held by them as* Partnership Property *to a* Purchaser.

THIS INDENTURE (*a*), made the —— day of ——, 19—, Between [*surviving partner*], of, &c., and [*other surviving partner*], of, &c., of the first part; [*executor of deceased partner*] (*b*), of, &c., of the second part; and [*purchaser*] of the

Parties.

(*z*) On a sale of the fee simple in possession the vendor pays the death duties which may become payable on the property: see *Re Kidd and Gibbon's Contract*, [1893] 1 Ch. 695; and the purchaser is not bound to accept an indemnity, but may require the vendor to commute and pay the duty: *Re Weston and Thomas's Contract*, [1907] 1 Ch. 244.

(*a*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

(*b*) The question, who are the proper conveying parties on a sale of partnership property, will depend on the form of the original conveyance on the purchase thereof by the firm. In the present case it is assumed that the property was conveyed to all the partners in fee, in trust for the

Conveyances of land by partners.

XVII. OF FREEHOLDS BELONGING TO A PARTNERSHIP FIRM.

third part: WHEREAS the said [*surviving partners*] and [*deceased partner*], late of, &c., carried on the business of merchants at —— in the county of —— in copartnership on the terms that the said [*surviving partners*] should be entitled to two third parts of the assets of the said business, and the said [*deceased partner*] should be entitled to the remaining third part of such assets; AND WHEREAS the said [*partners*] purchased for purposes of their said business the hereditaments hereby conveyed, and by an indenture dated, &c., and made between [*parties*], the said hereditaments were granted or assured to the use of [*partners*] their heirs and assigns, as joint tenants in trust for the said [*partners*], their executors, administrators, and assigns, as part of their partnership estate and property; AND WHEREAS the said [*deceased partner*] died on the —— day of ——, 19—, without having revoked or altered his will, dated, &c., whereby he appointed the said [*executor*] to be his sole executor, and the said will was proved by the said [*executor*] on the —— day of ——, 19—, in the principal Probate Registry; AND WHEREAS the said [*surviving partners*] and [*executor*] have agreed with the said [*purchaser*] for the sale to him of the said hereditaments at the price of 6,000*l.* NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of 4,000*l.* now paid to the said [*surviving partners*] by the said [*purchaser*], and of the sum of 2,000*l.* now paid to the said [*executor*] by the said [*purchaser*], making together the sum of 6,000*l.* (of which several sums of 4,000*l.* and 2,000*l.* the said [*surviving partners*] and the said [*executor*] respectively acknow-

Recitals:
of partnership;
of purchase of lands for partnership purposes;
of will of deceased partner;
of agreement for sale.
Testatum.

partners, as part of the partnership estate, without any proviso as to survivorship: see next precedent, and note (*c*), *post*, p. 345. The surviving partners having therefore (in the absence of stipulation) no power to bind the executors of the deceased partner, the concurrence of the latter is necessary. When real estate is held by partners in joint tenancy simply, as part of their partnership assets, the legal estate vests solely in the surviving partners, but they are trustees for the deceased partner of his share therein: see *Davies* v. *Games*, 12 Ch. D. 813.

Registered land.

If the property is in a compulsory district the form of conveyance will depend on whether or not the partners have been registered as joint proprietors: see L. T. A. 1875, s. 69; and L. T. Rule 191. If so registered, the proprietors can (subject to cautions and restrictions) convey by simple registered transfer. If not, then the precedent in the text may be used, adding a covenant by the vendors to execute a transfer, as in note (*j*), p. 317.

ledge the receipt), the said [*surviving partners*] as beneficial owners convey, and the said [*executor*] as the personal representative of the said [*testator*] deceased conveys and confirms unto the said [*purchaser*], ALL THAT [*describe parcels*], TO HOLD all the premises unto and to the use of the said [*purchaser*], his heirs and assigns.

IN WITNESS, &c.

XVIII. CONVEYANCE *of* FREEHOLDS *to* PARTNERS *as* JOINT TENANTS (*c*).

THIS INDENTURE (*d*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*partner*], of, &c. [*second partner*], of, &c., and [*third partner*], of, &c., carrying on the business of —— at ——, in the county of ——, in partnership under the style or firm of [A. & Co.] (hereinafter called "the purchasers"), of the other part, WITNESSETH that, in consideration of the sum of £—— now paid to the [*vendor*] by the purchasers (the receipt whereof is hereby acknowledged), the [*vendor*] hereby as beneficial owner grants unto the purchasers, ALL, &c. [*describe parcels*], TO HOLD all the premises unto and to the use of the purchasers, their heirs and assigns, as joint tenants, IN TRUST for the purchasers, their executors, administrators, and assigns, as part of their copartnership estate: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the purchasers, or in case any one or more of them shall have ceased to be a partner or partners in the said firm, then for the surviving or continuing partners or partner at any time or times to appoint a new trustee or new trustees of these presents, and in particular to appoint a new trustee in the place of any trustee who shall have ceased to be a member of the said firm as if such trustee were dead. And,

Parties.

Testatum.

Power to appoint new trustees, and power to trustees to sell, &c.

(*c*) The form of conveyance given in this precedent is that now generally employed on a purchase of land for partnership purposes. Its simplicity and conciseness render it useful in the case of a partnership formed to purchase land as a speculation for the purposes of re-sale. The proviso at the end of the form (which may be omitted, if desired) does away with difficulties which might arise in the event of the death or retirement of any partner or the settlement of a partner's share in the business.

Conveyances of land to partners.

(*d*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

NOTE. OF PROVISIONS TO PAYMENTS AS JOINT TENANTS

further, that the trustees or trustee for the time being hereof, shall have full power, without the concurrence of any beneficiary, to sell, mortgage, charge, lease, or otherwise dispose of the premises hereby conveyed or any of them, and to receive and give effectual receipts or discharges for any moneys payable under or by virtue of any such disposition.

[*Add statement as to value if appropriate, see* ante, *p.* 317.]

IN WITNESS, &c.

XIX. CONVEYANCE *of* FREEHOLDS (PART *of a* SETTLED ESTATE) *by* REVOCATION *of* USES *and* APPOINTMENT *by a* SOLE SURVIVING TRUSTEE SELLING *under a* POWER *of* SALE *in a* SETTLEMENT, *with the* CONCURRENCE *of the* TENANT FOR LIFE *and a* MORTGAGEE *of his* LIFE ESTATE. A JOINTRESS RELEASES *her* JOINTURE; *and the* TRUSTEE *of the* TERM *for* SECURING *the* JOINTURE SURRENDERS *the* TERM. COVENANT *as to* PAYMENT *of* SUCCESSION DUTY (*e*).

Parties

THIS INDENTURE (*f*), made the —— day of ——, 19—, BETWEEN [*trustee of settlement*], of, &c. (hereinafter called "the settlement trustee"), of the first part; [*tenant for life*], of, &c. (hereinafter called "the tenant for life"), of the second part (*g*); [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the third part; [*jointress*], of, &c., widow of Sir [A. B.], Baronet, late of, &c., deceased (hereinafter called "the jointress"), of the fourth part; [*trustee of jointure term*], of, &c. (hereinafter called

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(*e*) Since the Settled Land Act, 1882, sales under an express power in a settlement or will are becoming rare, as such powers are now seldom inserted: and even where they exist recourse is more usually had to the statutory powers than to the express powers. Sometimes, however, cases arise where it is convenient to exercise express powers of sale, as where it is desired to dispense with the requirements of sects. 39 and 45 of the Act.

(*f*) Stamp: see Preliminary Note, *ante*, p. 307.

(*g*) The consent of the tenant for life, even if it be not required by the terms of express powers of sale, is now rendered necessary by the Settled Land Act, 1882, s. 56 (2): *Re Clitheroe Estate*, 31 Ch. D. 135.

"the term trustee"), of the fifth part (*h*); and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the sixth part: WHEREAS by an indenture of settlement dated, &c., and expressed to be made between [*parties*] (being the settlement made in contemplation of the marriage shortly afterwards solemnised between the tenant for life and [*wife*] his wife), certain lands and hereditaments in the county of ——, including among other hereditaments the hereditaments hereby appointed and conveyed, were assured, subject to the jointure rentcharge thereby limited in favour of the jointress, and to a term of 800 years vested in the said term trustee, for securing the same jointure rentcharge, and also subject to certain charges for portions as therein mentioned, all of which have now ceased to be payable, and to the terms thereby limited for securing the same respectively, all of which last-mentioned terms have since been surrendered or determined or otherwise merged in the inheritance of the hereditaments comprised in the indenture now in recital, to the use of the tenant for life and his assigns during his life without impeachment of waste, with divers remainders over; and in the indenture now in recital is contained a power enabling the said [*trustees*] and the survivor of them, and the heirs of such survivor, at any time during the life of the tenant for life, at the request and by the direction of the tenant for life (to be signified by any writing or writings under his hand and seal), [*recite the power of sale verbatim, with the power to give receipts, and to revoke uses and appoint new uses*]; AND WHEREAS the said [*deceased trustee of settlement*] died on the —— day of ——; AND WHEREAS by an indenture of mortgage, dated, &c., and made, &c., the tenant

Recitals: of settlement;

of power of sale (*i*);

of death of trustee;

of mortgage of life estate;

(*h*) The trustee of the term need not be made a party, unless there has been a default in payment of the rentcharge, in consequence of which he has entered, or taken action and incurred costs with a view to entry, otherwise the release of the jointure rentcharge will of itself determine the term as a "satisfied term" within the stat. 8 & 9 Vict. c. 112; but by joining the trustee his admission that he has no claim for costs is obtained. A term does not become satisfied within the meaning of this Act, unless the beneficial interest in the whole charge secured by the term, and the beneficial interest in the whole estate are united and merged in one person: *per* James, L.J., in *Anderson* v. *Pignet*, L. R. 8 Ch. at p. 189.

(*i*) The terms of the power must, of course, be exactly followed in reciting it; and any ceremonies imposed upon the giving of his consent by the tenant for life must be accurately observed.

XIX. BY TRUSTEE UNDER EXPRESS POWERS.

for life, in consideration of the sum of £—— paid to him by the mortgagee, bargained, sold, and demised (*k*), all the said manors and hereditaments comprised in the hereinbefore recited indenture of settlement (subject, nevertheless, as is therein mentioned), unto the said mortgagee, for the term of 99 years if the tenant for life should so long live, subject to a proviso for redemption in the indenture now in recital contained (*l*); AND WHEREAS the settlement trustee has agreed with the purchaser for the sale to him of the fee simple in possession, free from incumbrances, of the hereditaments hereby conveyed, at the price of £——;

of contract for sale;

of agreement to release by jointress and mortgagee.

AND WHEREAS the jointress and the mortgagee being satisfied that the other hereditaments remaining subject to the uses, trusts, and limitations of the said settlement, are a sufficient security for the said jointure rentcharge and mortgage debt respectively, have consented to release the hereditaments hereby conveyed therefrom respectively [and it has also been agreed that the term trustee shall also join in these presents in manner hereinafter appearing (*m*); AND WHEREAS the tenant for life has agreed to indemnify the purchaser in respect of the duties payable on the death of the jointress in manner hereinafter appearing, and also to give to the purchaser the acknowledgment and undertaking hereinafter contained. NOW THIS INDENTURE WITNESSETH as follows (*n*):—

Testatum.

1. For effectuating the sale, and in consideration of the sum

(*k*) Mortgages of life estates were formerly framed in the form above recited, so as to avoid question as to the extinguishment of powers of leasing, &c.; but see, as to powers under settlements, *Re Bedingfield and Herring*, [1893] 2 Ch. 332; and as to powers under the Settled Land Acts, see S. L. A. 1882, s. 50, sub-ss. (1) and (3). The mortgage may now, therefore, be made by grant of the whole life estate. In the old form the words "bargain and sell" were employed in order that the instrument might operate as a bargain and sale for the term, as a simple demise for the term would confer on the mortgagee until entry only an *interesse termini*, as to which, see Elph. Introd. 193.

(*l*) The proviso for redemption should not be set forth, as the mortgagee is not paid off, but releases the lands sold.

(*m*) See, as to this recital, *ante*, p. 347, note (*h*).

Power of sale, how to be framed.

(*n*) The exercise of a power of sale, it is obvious, includes both the revocation of the subsisting uses of the settlement, and the limitation of the new uses in favour of a purchaser; and therefore the express power to revoke is often omitted, being in effect comprised in the power to

of £—— paid by the purchaser to the settlement trustee (the receipt whereof is hereby acknowledged (*o*)), the settlement trustee, at the request, and by the direction of the tenant for life, directing as beneficial owner (*p*), in exercise of the power for this purpose contained in the hereinbefore recited indenture of settlement, and of every other power enabling him in this behalf, hereby [revokes and makes void All and every the uses, trusts, powers, and provisoes in and by the hereinbefore recited indenture of settlement limited concerning the said hereditaments hereinafter conveyed, and] as trustee appoints, that ALL THAT [*describe parcels*], shall from henceforth remain and be, To the use of the purchaser, his heirs and assigns.

Revocation.

Appointment.

Parcels:

2. For the consideration aforesaid, the jointress as mortgagee, at the request of the tenant for life, as to her said jointure, hereby releases [and the term trustee, as trustee, at the request of the jointress and tenant for life, as to the said term of 800 years, hereby surrenders], and the mortgagee, as mortgagee, as to the said term of 99 years determinable as aforesaid, hereby surrenders unto the purchaser, ALL and singular the premises hereby conveyed, To HOLD the same unto the purchaser, his heirs and assigns, freed and discharged from the said jointure, and the said mortgage debt, and from all powers and remedies for securing and recovering the same respectively, and to the intent that the said terms of 800 years and 99 years respectively in the same premises may henceforth be merged and extinguished in the freehold and inheritance thereof.

Release by jointress and mortgagee, and surrender of terms by termor and mortgagee.

3. The tenant for life hereby covenants with the purchaser that the tenant for life will, as and when the same shall become payable, pay all such duties as may become payable in respect of the premises hereby conveyed, or any part thereof, upon the death of the jointress, and will at all times keep the purchaser, his executors, administrators, and assigns, effectually indemnified against all claims, actions, proceedings, costs, and

Covenant by tenant for life to pay succession duty.

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appoint. The purchaser's conveyance will assume the form either of a deed of revocation and new appointment, or of a deed of new appointment alone, as the power is framed in one way or the other. If the power does not require an express revocation of the uses of the settlement, the *testatum* clause in the precedent in the text which contains the revocation should be altered accordingly.

(*o*) As to trustees' receipts, see Trustee Act, 1893, ss. 17 (1) and 20.

(*p*) This implies full covenants for title by the tenant for life.

XIX. BY TRUSTEE UNDER EXPRESS POWERS.

expenses whatsoever, for or in respect of such succession duty or any part thereof. And the tenant for life hereby acknowledges the right of the purchaser to the deeds and documents mentioned in the schedule hereto, and to delivery of copies thereof; And hereby undertakes for the safe custody thereof.

Acknowledgment and undertaking.

Add statement as to value, ante, p. 317, if appropriate.

In witness, &c. (*q*).

The Schedule hereinbefore referred to.

XX. CONVEYANCE *of* Freeholds *by* Trustees *under a* Trust *for* Sale *contained in a* Will *to a* Purchaser *in* Fee Simple: *the* Widow *consents to the* Sale. Acknowledgment *by the* Trustees *of the* Right *of the* Purchaser *to the* Production *of* Deeds (*r*).

THIS INDENTURE (*s*), dated the —— day of ——, 19—,

(*q*) The execution of this deed by the tenant for life must be witnessed by two witnesses if required by the terms of the power of sale.

Settlements upon trust for sale within sect. 63 of S. L. Act, 1882.

(*r*) As to settlements within sect. 63 of the S. L. Act, 1882, see *Re Searle*, [1900] 2 Ch. 829; *Re Darnley*, [1907] 1 Ch. 159; *Re Oliver*, [1908] 2 Ch. 74. That section does not apply where the trust for sale is deferred (*Re Horne*, 39 Ch. D. 84; but as to a future trust, see S. L. Act, 1890, s. 16 (2)), or where it may never arise (*Re Goodall*, [1909] 1 Ch. 440); but it applies where the trust for sale is at the request (*Re Childs*, [1907] 2 Ch. 348) or with the consent (*Re Wagstaff's S. E.*, [1909] 2 Ch. 201) of the tenant for life. By sect. 6 (1) of the S. L. Act, 1884, the consent of the tenant for life to a sale by trustees under a trust for sale is dispensed with; and by sect. 7 of the same Act the powers given by sect. 63 of the S. L. Act, 1882, cannot be exercised without the leave of the Court, and the order giving such leave must be registered as a *lis pendens* (sect. 7 (v) and (vi)). By sect. 10 (3) of the Conveyancing Act, 1911, a trust for sale of land whether express or implied is for the protection of a purchaser to be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale. Until the appointment of new trustees the personal representatives of a sole or last surviving or continuing trustee can exercise any power or trust given to such trustee (see C. A. 1911, s. 8) in the case of trusts created by instruments coming in operation after the C. A. 1881 (sub-s. (3)), in the absence of a contrary intention expressed in the instrument creating the trust (sub-s. (2)); but this section does not apply to copyholds vested in the tenant on the rolls (sub-s. (5)).

How long a trust for sale subsists.

Power of sale in representatives of surviving trustee.

(*s*) Stamp, *ad valorem*: see Preliminary Note, *ante*, p. 307.

XX. BY TRUSTEES UNDER TRUST FOR SALE IN A WILL.

and made BETWEEN [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the vendors"), of the first part; [*widow*], of, &c., of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS [*testator*], late of, &c., by his will, dated, &c., after certain legacies and specific devises (which did not include the said hereditaments hereby conveyed), devised all the rest and remainder of his real estate of whatever tenure and wherever situate unto the vendors, their heirs and assigns, upon trust that they should, with the consent in writing of his wife the said [*widow*], during her life and widowhood, sell the same real estate by public auction or private contract as therein mentioned; AND the testator thereby appointed the vendors to be the executors of his said will: AND WHEREAS the said testator died on the —— day of ——, 19—, being at the time of his death seised of the said hereditaments hereby conveyed, and without having revoked or altered his said will, which was on the —— day of ——, 19—, proved by the vendors in the Principal [—— District] Probate Registry of the High Court of Justice: AND WHEREAS the vendors, with the consent of the said [*widow*], and in execution of the trust for sale contained in the said will, have agreed with the purchaser for the sale to him of the said hereditaments in fee simple in possession, free from incumbrances, at the price of £——: AND WHEREAS the several deeds and writings specified in the second schedule hereto relate as well to other hereditaments as to the hereditaments hereby conveyed, and upon the treaty for the said sale, it was agreed that the vendors should give such acknowledgment in respect thereof as hereinafter appears. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendors by the purchaser (the receipt whereof is hereby acknowledged), the vendors, with the consent of the said [*widow*], testified by her executing these presents, hereby as such trustees as aforesaid grant and as the personal representatives of the said testator release and confirm unto the purchaser, and his heirs, ALL THAT [*describe parcels by reference to plan and first schedule* (*ss*)]: TO HOLD all the premises unto and to the use of the purchaser, his heirs and assigns; AND the vendors hereby acknowledge the right of the purchaser to the production

Parties.

Recitals: of will devising lands on trust for sale;

of agreement for sale;

of agreement as to deeds retained.

Testatum.

(*ss*) See *ante*, Precedent XII. at p. 335.

XX. BY TRUSTEES UNDER TRUST FOR SALE IN A WILL.

of the several deeds and writings specified in the second schedule hereto, and to delivery of copies thereof; [And they hereby undertake for the safe custody thereof] (*t*).

[*Add statement as to value*, ante, *p.* 317, *if appropriate*.]

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

XXI. CONVEYANCE *on a* PURCHASE *by* TRUSTEES *under a* POWER *in a* MARRIAGE SETTLEMENT, *with the* CONSENT *of the* PARTIES BENEFICIALLY INTERESTED; *the* CONVEYANCE *being made to the* USES *of the* SETTLEMENT.

Parties.

THIS INDENTURE (*u*), made the —— day of ——, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the first part; [*husband*], of, &c., and [*wife*], his wife, of the second part; and [*trustees*], of, &c. (hereinafter called "the purchasers"), of the third part.

Recital of settlement, containing the power to purchase.

WHEREAS the vendor is seised for an estate in fee simple in possession, free from incumbrances, of the hereditaments hereby assured: AND WHEREAS, by an indenture, dated, &c., and made between [*parties*] (being the settlement made on the marriage of the said [*husband*] and [*wife*], his wife), certain freehold hereditaments were assured to the uses, upon the trusts, and subject to the powers, provisoes, and declarations therein expressed and declared concerning the same; AND in the same indenture was contained a power for the trustees for the time being thereof, with the consent in writing of the said [*husband*] and [*wife*], his wife, or the survivor of them, to lay out and invest moneys arising thereunder in the purchase of freehold or copyhold hereditaments held for an estate in fee simple; which hereditaments, when so purchased, should be settled and assured to the uses, upon the trusts, and subject to the powers, provisoes, and declarations expressed and declared concerning the freehold hereditaments thereby settled and assured.

(*t*) Trustees as a rule cannot be expected to give this undertaking unless they happen to be also beneficiaries.

(*u*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

or such of the said uses, trusts, powers, provisoes, and declarations as should be then subsisting, undetermined, and capable of taking effect; AND WHEREAS the purchasers being the present trustees of the said indenture of settlement, in pursuance of the said power therein contained as aforesaid, have, with the consent of the said [*husband*] and [*wife*], agreed with the vendor for the purchase of the unincumbered fee simple of the hereditaments hereinafter conveyed at the price of £——; NOW THIS INDENTURE WITNESSETH that, for effectuating the said sale, and in consideration of the sum of £—— paid by the purchasers out of moneys arising under the said indenture of settlement, and liable to be invested as aforesaid to the vendor, with the consent of the said [*husband*] and [*wife*], his wife, testified by their severally executing these presents (the receipt whereof is hereby acknowledged), the vendor, as beneficial owner, hereby grants unto the purchasers [*describe parcels*]; TO HOLD the same unto the purchasers, and their heirs, to the uses, upon the trusts, and for the intents and purposes, and subject to the powers, provisoes, and declarations in and by the hereinbefore recited indenture of settlement declared and contained concerning the hereditaments thereby assured, or such and so many of the said uses, trusts, intents, and purposes, powers, provisoes, and declarations as are now subsisting and capable of taking effect.

XXI. ON PURCHASE BY TRUSTEES UNDER A POWER.

Contract for purchase.

Testatum.

Vendor, in consideration of purchase-money, releases to purchasers.

Habendum.

To uses of settlement.

[*Statement as to value*, ante, *p.* 317, *if appropriate*.]

IN WITNESS, &c.

XXII. CONVEYANCE *of* FREEHOLDS *on* SALE *by* TENANT *for* LIFE *under the Settled Land Acts, the* PURCHASE-MONEY *being* PAID *to the* TRUSTEES *of the* SETTLEMENT. VARIATIONS *where the* PURCHASE-MONEY *is* PAID *into* COURT, *and where the* SALE *includes the* PRINCIPAL MANSION HOUSE, &c. (*x*).

THIS INDENTURE (*y*), made the —— day of ——, 19—, BETWEEN [*tenant for life*] (*z*), of, &c. (hereinafter called "the

Parties.

(*x*) As to the powers of a tenant for life under the Settled Land Acts, see Preliminary Note, *ante*, p. 310.

(*y*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

(*z*) As to notice to be given to the trustees of the settlement, and as to the sale of the mansion house, see Preliminary Note, *ante*, p. 311.

XXII. OF FREEHOLDS BY TENANT FOR LIFE UNDER SETTLED LAND ACT, 1882.

vendor"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS, under an indenture, dated, &c., and made, &c., the hereditaments hereby conveyed stand limited to certain uses, under which the vendor is tenant for life in possession thereof, with remainders over, and the said indenture of settlement contains a power for the vendor to raise a sum or sums of money by way of portions for his children as therein mentioned, and also contains a power for the trustees (*a*), with the consent of the vendor (*b*), to sell the said hereditaments as therein mentioned:

Recitals: of title of tenant for life;

of power of sale:

(*a*) If the sale is made with the consent of the trustees, the trustees will be necessarily parties, and then will be recited as follows:—

"AND WHEREAS the said [*trustees*] have agreed to testify their consent to such sale in manner hereinafter appearing."

Sale with sanction of Court.

If the sale be made with the sanction of the Court, the trustees will not be necessary parties unless they are to receive the purchase-money. The following recitals will be inserted:—

"AND WHEREAS, by an order of the Chancery Division of the High Court of Justice, dated the —— day of ——, 19—, and made by Mr. Justice X. In the matter of the —— estate, &c. [*set out the full title of the matter*], on the application of the vendor, the tenant for life under the said settlement, it was ordered that the vendor, or his successors, be at liberty to sell the principal mansion house and the lands usually held therewith (being the said lands and hereditaments hereby conveyed)."

If the sale is made pursuant to a contract conditional upon the order of the Court being obtained, the recital in the text relating to the contract will be varied accordingly.

(*b*) As to who are trustees of the settlement for the purposes of the Acts, see Preliminary Note, *ante*, p. 311. If the settlement contain a clause appointing the trustees to be trustees for the purposes of the Act, this clause should be recited. If there be no trustees satisfying any of the definitions under either Act, application must be made to the Court for the appointment of trustees of the settlement for the purposes of the Act, and the order must be recited. The recitals should show who are the trustees of the settlement for the purposes of the Acts, for if a purchaser has notice that there are no such trustees, or that there was not the proper number of such trustees in existence at a time which would admit of the proper notice being given (see sect. 45 of the 1882 Act), he would have notice that the requirements of the Act had not been satisfied:

AND WHEREAS no money has been actually raised under the said power of portioning at the date of these presents (*c*): AND WHEREAS the vendor, as such tenant for life as aforesaid, has agreed with the purchaser for the sale to him in fee simple in possession, free from incumbrances, of the said hereditaments hereby conveyed, at the price of £—— (*d*): AND WHEREAS [*recite agreement for acknowledgment and undertaking as to deeds*, ante, *Precedent II., p.* 318]. NOW THIS INDENTURE WITNESSETH as follows:— *Recital of agreement for sale.* *Testatum.*

1. In pursuance of the said agreement, and in consideration (*e*) of the sum of £—— paid by the purchaser by the direction of the vendor to the trustees as such trustees as aforesaid (*f*) (the

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see *Hatten* v. *Russell*, 38 Ch. D. 334; *Hughes* v. *Fanagan*, L. R. 30 Ir. 111; *Mogridge* v. *Clapp*, [1892] 3 Ch. 382; *Re Fisher and Grazebrook*, [1898] 2 Ch. 660.

(*c*) This recital is advisable, having regard to sect. 20 (ii) of the Act of 1882, in order to preclude a future purchaser, after the lapse of twenty years, from making any requisition as to estates, interests, or charges, conveyed or created for securing money "actually raised."

(*d*) The tenant for life has the option, under sect. 22, to direct whether the purchase-money shall be paid into Court or to the trustees. If he chooses to direct payment into Court, the trustees will not be parties to the conveyance unless, having the legal estate, they give an acknowledgment in respect thereof. The following recital will be here inserted:— *Payment of purchase-money into Court.*

"AND WHEREAS, in pursuance of an order of the Chancery Division of the High Court of Justice, dated, &c., and made by Mr. Justice X.: In the matter, &c., the sum of £——, being the amount of the said purchase-money, after deducting therefrom the costs of paying in the same, was paid by the purchaser into Court to the credit of, &c."

(*e*) If the purchase-money be paid into Court, the consideration will be stated as follows:—

"In consideration of the said sum of £—— so paid into Court as aforesaid (the payment whereof, in manner aforesaid, the vendor doth hereby acknowledge)."

(*f*) If the purchase-money is paid to the trustees there must be two at least to receive it unless the receipt of one is authorised by the settlement (sect. 40) or the Public Trustee is sole trustee: see *Re Leslie*, [1911] 1 Ch. 611; *Re Johnson's S. E.*, (1913) W. N. 222; 57 Sol. J. 717. The trustees join, in the precedent in the text, only for the purpose of receiving the purchase-money. The power to convey, conferred on the tenant for life by sect. 20, gives him a statutory power

XXII. OF FREEHOLDS BY TENANT FOR LIFE UNDER SETTLED LAND ACT, 1882.

receipt and payment whereof in manner aforesaid the trustees and the vendor respectively hereby acknowledge), the vendor, in exercise of the power in this behalf given to him by the Settled Land Acts, 1882 to 1890, and of every or any other power enabling him (*g*), doth hereby, as beneficial owner, grant unto

Parcels.

the purchaser ALL THOSE the several closes and parcels of land, containing in the whole —— acres, —— roods, or thereabouts, situate and being in the parish of ——, in the county of ——, all which closes and parcels of land and hereditaments are more particularly described in the first schedule hereto: TO HOLD the same unto and to the use of the purchaser, his heirs and assigns.

Proviso restricting covenants for title (*h*).

2. PROVIDED ALWAYS, that so far as regards the reversion or remainder expectant on the life estate of the vendor in the premises hereby assured, and the title to and the further assurance thereof after his decease, the covenants on his part implied in these presents by statute shall not extend to the acts or defaults

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(analogous to the common law power sometimes given to executors) to transfer the fee simple, or other estate, the subject of the settlement, which is quite independent of any powers vested in the trustees by the settlement itself. It seems, therefore, superfluous to make the trustees convey, though this course is sometimes adopted. An express covenant by the trustees that they have not incumbered may be inserted after clause 2 as follows:—

3. "AND each of them, the trustees, so far as relates to his own acts and omissions only, hereby covenants with the purchaser, his heirs and assigns, that they, the covenanting parties respectively, have not at any time heretofore done or knowingly omitted, or suffered or been party or privy to, anything whereby the hereditaments hereby assured, or any part thereof, are, is, or may be incumbered or affected, or whereby the vendor is prevented from granting the same, or any part thereof, in manner aforesaid."

(*g*) In the case of a sale of a principal mansion house, &c., add (as the case may require)—

Sale of mansion house, &c.

"With the consent of the trustees testified by their respectively executing these presents,"

or,

"By the order and with the sanction of the Court, testified by the hereinbefore recited order of, &c."

(*h*) A limitation of this kind is usually inserted where a tenant for life conveys under an express or statutory power.

of any person other than or except himself and his own heirs and persons claiming or to claim through or in trust for him or them.

3. The vendor (*i*) hereby acknowledges the right of the purchaser to the production of the several deeds and documents specified in the second schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. Acknowledgment, &c. as to deeds.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

XXIII. CONVEYANCE *of* Copyholds *by a* Tenant *for* Life *under the Settled Land Act*, 1882.

THIS INDENTURE (*k*), made the —— day of ——, 19—, Between [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the first part; [*tenant for life*], of, &c. (hereinafter called "the vendor"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: Whereas, at a Court held for the manor of ——, in the county of ——, on the —— day of ——, the hereditaments hereinafter described (together with other hereditaments) were surrendered to the use of [*testator*], his heirs and assigns, at the will of the lord, according to the custom of the said manor, under the rents, suits, and services therefor due and of right accustomed: And on the same day the said [*testator*] was duly admitted thereto: And whereas the said [*testator*] by his last will dated the —— day of ——, 19—, after bequeathing certain legacies as therein mentioned gave, devised, and bequeathed all the residue

Parties.

Recitals: of surrender; of copyholds;

of admittance of testator; of devise of copyholds;

(*i*) In the precedent in the text the tenant for life is assumed to have the legal estate, and in that case he has the custody of the deeds, and is the proper person to give the requisite acknowledgment. If the legal estate is vested in the trustees, the deeds will presumably be in their custody, and they will accordingly give an acknowledgment of the purchaser's right to production, but not usually an undertaking for safe custody of the deeds.

(*k*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

XXIII. OF COPYHOLDS BY TENANT FOR LIFE UNDER SETTLED LAND ACT, 1882.

of his estate, property, and effects, with their appurtenances, unto the trustees, their heirs, executors, administrators, and assigns, Upon trust (amongst other things) to permit his son, the vendor, during his life, to receive the yearly rents, issues, and profits of ALL THOSE his seven copyhold messuages or dwelling-houses, with the land and appurtenances thereto belonging, situate in ——, in the county of —— (which seven messuages are the hereditaments hereinafter described and hereby conveyed), and after the decease of the vendor, to stand seised of the same hereditaments in trust for the children of the vendor as therein mentioned; AND the said [*testator*] appointed the trustees to be executors of his will: AND WHEREAS the said [*testator*] died on the —— day of —— without having revoked or altered his said will, which was proved by the said executors in the Principal [—— District] Probate Registry, on the —— day of ——: AND WHEREAS on the —— day of ——, the trustees were duly admitted tenants of the hereditaments comprised in the said surrender of the —— day of ——, according to the custom of the said manor: AND WHEREAS by an order of the Chancery Division of the High Court of Justice, made by Mr. Justice ——, on the —— day of ——, 19—, in the matter of the estate settled by the will of [*testator*], and in the matter of the Settled Land Acts, 1882 to 1890, the said trustees were appointed and are now trustees of the said will for the purposes of the said Acts: AND WHEREAS the vendor, as tenant for life under the said will, and in exercise of the powers vested in him by the Settled Land Acts, 1882 to 1890, has agreed to sell to the purchaser, at the price of £——, the hereditaments hereinafter described, and the inheritance thereof in possession, according to the custom of the said manor: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the trustees, by the direction of the vendor (the receipt and payment whereof, in manner aforesaid, the trustees and the vendor hereby respectively acknowledge), the vendor, as beneficial owner, by virtue of the powers vested in him by the said Acts, and of every or any other power enabling him in this behalf, doth hereby convey (*l*) unto the purchaser

of death of testator and probate of the will:

of admittance of trustees;

of order appointing "trustees of settlement" under Settled Land Acts;

of agreement for sale of copyholds.

Testatum.

(*l*) As to the operation of this deed, see Settled Land Act, 1882, s. 20 (3); and Preliminary Note, *ante*, p. 313.

XXIII. OF COPYHOLDS BY TENANT FOR LIFE UNDER SETTLED LAND ACT, 1882.

ALL THOSE the seven copyhold messuages or dwelling-houses, with the land and appurtenances thereto, situate in —— aforesaid, comprised and described in the hereinbefore-recited will of the said [*testator*], deceased, and now better known by the description following (that is to say) *add modern description*, TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, at the will of the lord of the said manor, according to the custom of the said manor, by and under the suits, rents, and services therefor due and of right accustomed.

[*Add, if necessary, proviso restricting the vendor's implied covenants for title as in Precedent XXII.*, ante, *p.* 356.]

[*Add also statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

XXIV. CONVEYANCE *by* TENANT *for* LIFE, *with* LEAVE *of the* COURT *under the Settled Land Acts, of* LANDS *settled upon* TRUST *for* SALE (*m*).

THIS INDENTURE (*n*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c. (hereinafter called "the vendor"), of the first part; [*trustees*], of, &c. (hereinafter called "the trustees"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS under or by virtue of the will dated, &c., and proved, &c., of [*testator*], late of, &c., deceased, the lands and hereditaments hereby conveyed were devised to the trustees thereof upon trust at any time, with the consent of the vendor, to sell the same, or any part or parts thereof, and to pay the rents and profits thereof to the vendor until sale: AND WHEREAS the trustees are the present trustees of the said will: AND WHEREAS by an order of the Chancery Division of the High Court of Justice, dated, &c., and made by ——, in the matter, &c., it was ordered that the vendor be at liberty to exercise, in respect of the said lands and hereditaments, the powers of sale and conveyance conferred by sect. 63 of the Settled Land Act, 1882; AND WHEREAS the vendor, in exercise of the powers conferred upon him by the

Parties.

Recitals: of devise of lands on trust for sale;

of order giving leave for sale;

of agreement for sale.

(*m*) See Preliminary Note, "Land subject to trust for sale," *ante*, p. 311.

(*n*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

XXIV. OF LANDS SETTLED ON TRUST FOR SALE UNDER SETTLED LAND ACTS.

Settled Land Acts, 1882 to 1890, and the hereinbefore recited order, has agreed with the purchaser for the sale to him of the said lands and hereditaments hereby conveyed and the inheritance thereof in fee simple in possession, at the price of £——.

Testatum. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the trustees, by the direction of the vendor (the receipt and payment whereof, in manner aforesaid, the trustees and the vendor hereby respectively acknowledge), the vendor, by virtue and in exercise of the powers conferred on him by sect. 63 of the Settled Land Act, 1882, and the hereinbefore recited order of the —— day of ——, and of every or any other power enabling him in this behalf, hereby, as beneficial owner, grants unto the purchaser, ALL THAT [*describe parcels*], TO HOLD all the premises unto and to the use of the purchaser, his heirs and assigns.

[*Add, if necessary, the proviso restricting the vendor's covenants for title as in Precedent XXII.*, ante, *p.* 356; *and statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

XXV. CONVEYANCE *under the* SETTLED LAND ACTS *of* FREEHOLDS *to which an* INFANT *is* ABSOLUTELY ENTITLED *in* FEE SIMPLE (*a*).

Parties. THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c., and [*vendor*], of, &c. (hereinafter called "the vendors"), of the one part, and [*purchaser*], of, &c.

(*a*) As to the sale of the lands of an infant, see Preliminary Note, "Infants," *ante*, p. 310. If the infant is registered as proprietor of the land his guardian (who, if necessary, must be appointed by the Court for the purposes of the Land Transfer Acts, 1875 and 1897) can act on his behalf, and should be made a party of the second part to the conveyance, and the conveyance will then contain recitals (1) of the registration of the infant as proprietor, (2) of the appointment of the guardian, and (3) agreement of the guardian to join in the conveyance.

(*b*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

(hereinafter called "the purchaser"), of the other part: WHEREAS [*testator*], late of, &c., deceased, by his will, dated, &c., appointed A. B. and C. D. executors thereof, and thereby ordered that all his debts should be paid; AND, subject thereto, the said [*testator*] gave, devised, and bequeathed, all his real and personal estate, of what nature or kind soever and wheresoever, unto his son [*infant*], his heirs, executors, administrators, and assigns, but the said will contained no power of sale of the hereditaments thereby devised, nor any appointment of any persons to be the trustees thereof for the purposes of the Settled Land Acts: AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, seised of the lands and hereditaments hereby conveyed, in fee simple free from incumbrances and without having revoked or altered his said will, and the said will was proved in the Principal Probate Registry on the —— day of ——, 19—: AND WHEREAS the debts of the said [*testator*] have all been fully paid and satisfied; AND WHEREAS by an indenture made the —— day of ——, between the said A. B. and C. D., of the one part, and the said [*infant*] of the other part, the said A. B. and C. D. granted and released (amongst other hereditaments) the hereditaments hereby assured unto the said [*infant*], his heirs and assigns (*d*); AND WHEREAS the said [*infant*] is an infant under the age of twenty-one years: AND WHEREAS, by an order of the Chancery Division of the High Court of Justice, made on the —— day of ——, 19—, by Mr. Justice ——, in the matter of, &c., it was ordered that during the minority of the said [*infant*], the powers of sale and convey-

Recital of will (*c*).

of death of testator, &c.;

of payment of debts and conveyance to infant by the personal representatives;

of order appointing persons to sell and convey;

(*c*) If the infant is entitled by descent substitute the following recital for the first four recitals in the text:—

"Whereas [*infant*], of, &c., an infant under the age of twenty-one years, is seised of the hereditaments hereby assured in fee simple in possession free from incumbrances as heir-at-law of [*intestate*], who died seised thereof intestate on the —— day of ——, and under a conveyance dated the —— day of ——, from [*administrator*] to whom letters of administration of the real and personal estate of the said [*intestate*] were granted by the Principal [—— District] Probate Registry on the —— day of ——."

Recital of seisin.

(*d*) See Land Transfer Act, 1897, Part I., Preliminary Note, *ante*, p. 313.

XXV. OF LANDS OF AN INFANT.

ance, and other powers conferred on tenants for life by the Settled Land Acts, 1882 to 1890, might be exercised by the vendors on behalf of the said [*infant*] during his minority over or in relation to his said estate (*e*); AND it was thereby further ordered that all moneys which should from time to time be paid in respect of the exercise of the said powers of sale and conveyance by the vendors should be paid into Court to the credit of an account intituled, &c.: AND WHEREAS the vendors, in exercise of the said powers vested in them by the said order, have agreed with the purchaser for the sale to him of the hereditaments hereby assured in fee simple in possession, free from incumbrances, at the price of £——: AND WHEREAS, pursuant to the hereinbefore recited order, the sum of £——, being the amount of the purchase-money so agreed upon as aforesaid, was, on the —— day of ——, 19—,

of agreement for sale;

of payment of purchase-money into Court;

(*e*) As to the appointment of persons to exercise these powers on behalf of an infant, see sect. 60 of the Settled Land Act, 1882. If the order went on to appoint the vendors to be "trustees of settlement," add here,—

"And it was thereby further ordered that the said [*vendors*] should, during the minority of the said [*infant*], be the trustees of the settlement created by the will of the said [*testator*] for the purposes of the Settled Land Acts."

In the present case the will under which the infant is entitled to the lands sold is evidently the "settlement" within the definition contained in sect. 2 of the Settled Land Act, 1882; but where an infant derives his title by descent, it is not clear what instrument (if any) is to be regarded as the settlement. It appears, however, to be sufficient for the purposes of the sale of an infant's lands, whether his title is derived under a settlement or by descent, that the order should merely appoint persons to exercise on his behalf the powers of sale and conveyance given by the Act. The persons so appointed can sell and convey the lands to the purchaser, and no "trustees of the settlement" are required in such a case for the purpose of receiving notices or any other purpose connected with the sale, except for the purpose of receiving and giving receipts for the purchase-money, which, as there are no trustees, must be paid into Court: see *Re Dudley*, 35 Ch. D. 338. If there are trustees of the will (or settlement) for the purposes of the S. L. A., they can, under sect. 60 of the Act of 1882, sell and give a valid discharge for the purchase-money under their express power or under the statutory power, as the case may be, without an order of the Court, in which case there will be a recital in the conveyance showing how they became trustees for the purposes of the Acts.

paid into Court to the credit of the said account: NOW THIS INDENTURE WITNESSETH, that, for effectuating the said contract, and in consideration of the sum of £— so paid by the purchaser into Court as aforesaid (the payment of which sum of £—— the vendors hereby acknowledge), they the vendors, by virtue and in exercise of the powers conferred upon them by the Settled Land Acts, 1882 to 1890, and vested in them by the hereinbefore recited order, and of every or any other power enabling them in this behalf, do hereby as trustees, on behalf of the said [*infant*] (*f*), convey unto the [*purchaser*] ALL and singular [*describe parcels*]. TO HOLD the same unto and to the use of the purchaser, his heirs and assigns: AND the vendors hereby, on behalf of themselves, and also (so far as they lawfully may or can) of the said infant, acknowledge the right of the said purchaser to production of the muniments of title specified in the schedule hereto, and to delivery of copies thereof.

XXV. OF LANDS OF AN INFANT.

Testatum.

Habendum.

Acknowledgment, &c. (*g*).

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*f*) If the guardian joins, say,
"with the consent hereby testified of the said [*guardian*]."

(*g*) It would seem that the persons appointed to sell and convey the infant's lands must necessarily retain the custody and control of the deeds for the purposes of future sales until he attains full age, when the right to such custody and control and also the obligation would pass to him. It is therefore conceived that an acknowledgment and undertaking in the form given in the text would sufficiently meet the requirements of the case. It seems, however, somewhat doubtful how far the vendors can bind the infant, either by acknowledgment (if they do not themselves retain the deeds) or by covenant.

Acknowledgments and undertakings as to title deeds.

XXVI. IN FEE BY TENANT IN CURTESY.

XXVI. CONVEYANCE *in Fee of* Freeholds *by a* Tenant *by the* Curtesy (*h*), *with the* Consent *of an* Assignee for Value *of the* Life Estate (*i*).

THIS INDENTURE (*k*), made the —— day of ——, 19—,

Parties. Between [*tenant by the curtesy*], of, &c. (hereinafter called "the vendor"), of the first part; [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the second part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the third part; and [*purchaser*], of, &c. (hereinafter called the "purchaser"), of the fourth part:

Recitals: of will: Whereas [*testator*], late of, &c., deceased, by his will, dated, &c., after specifically devising certain lands and hereditaments which did not include the lands and hereditaments hereby conveyed, gave, devised, and bequeathed all the rest, residue, and remainder of his real and personal estate, whatsoever and wheresoever situate, unto his daughter [A. B.], the wife of the vendor, and her heirs and assigns:

of death, seisin and probate: And whereas [*recite death and seisin of testator, and probate of his will, ut ante*, p. 361] (*l*):

of issue of marriage: And whereas there was issue of the marriage between the said [A. B.] and the vendor, one child only, namely [C. B.]:

of death of wife: And whereas the said [A. B.] died on the —— day of ——, intestate:

of mortgage: And whereas, by an indenture of mortgage, dated, &c., and made, &c., the vendor conveyed (*m*) the said hereditaments hereinafter described unto and to the use of the mortgagee for the life of the vendor, by way of mortgage to secure to the mortgagee the payment on the —— day of —— then next of the sum of £—— with interest as therein mentioned:

of appointment of trustees of settlement by Court; And whereas, by an order of the Chancery Division of the High Court of Justice, made by Mr. Justice ——, on the ——

(*h*) A tenant by the curtesy has the powers of a tenant for life under the Settled Land Acts. See S. L. Act, 1882, s. 58 (1) (viii); and S. L. Act, 1884, s. 8.

(*i*) See sect. 50 of the Act of 1882, and see note (*o*) to this precedent, *infra*.

(*k*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

(*l*) Add if necessary a recital of the assent of the personal representatives to the devise: see *ante*, p. 341.

(*m*) Mortgages of life estates are sometimes effected by demise, in which case this recital would require variation: and the mortgagee would surrender the term in the operative part.

XXVI. IN FEE BY TENANT IN CURTESY.

day of ——, in the matter of, &c., and in the matter of the Settled Land Acts, 1882 to 1890, the trustees were appointed to be trustees for the purposes of the said Acts of the settlement deemed to be existing under the said Acts, and to be made by the said [A. B.] (*n*); AND WHEREAS the vendor has agreed with the purchaser for the sale to him of the said lands and hereditaments in fee simple in possession free from incumbrances, at the price of £——, and the mortgagee has agreed to concur in these presents for the purpose and in manner hereinafter appearing, to the intent that the said purchase-money may become subject to the said mortgage in substitution for the said lands and hereditaments hereby conveyed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser by the direction of the vendor, and with the consent hereby testified of the mortgagee to the trustees (the receipt and payment in manner aforesaid of which sum of £—— the trustees and the vendor and mortgagee hereby respectively acknowledge), the vendor, with the consent of the mortgagee (*o*), hereby as beneficial owner conveys, and the mortgagee hereby as mortgagee conveys and confirms, unto the purchaser ALL THAT [*describe parcels*], TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, freed and discharged from all principal moneys and interest secured by and from all claims and demands, under the said indenture of mortgage.

of agreement for sale.

Testatum.

[*Statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

(*n*) See sect. 8 of the Settled Land Act, 1884.

(*o*) See sect. 50 (3) of the Act of 1882, which provides that the rights of an assignee for value of the life estate are not to be affected without his consent. But where the tenant for life sells with the consent of the mortgagee of his life estate, the concurrence of the latter in the conveyance is not necessary: see *Re Dickin and Kelsall*, [1908] 1 Ch. 213; approved in *Re Davies and Kent*, [1910] 2 Ch. 35; his security will attach to the purchase-money in the hands of the trustees, and the investments thereof: see sect. 22, sub-sect. (5). Sect. 20, sub-sect. (2) (ii) does not extend to mortgages created by beneficiaries: see *Re Dickin and Kelsall, supra.*

XXVII. OF COPYHOLDS AND LEASEHOLDS TO TRUSTEES OF A SETTLEMENT UNDER THE SETTLED LAND ACT, 1882.

XXVII. CONVEYANCE *to* TRUSTEES *of a* SETTLEMENT *of* COPYHOLDS *and* LEASEHOLDS *upon a* PURCHASE *with* CAPITAL MONEYS *arising under the Settled Land Acts* (*p*).

Parties.

THIS INDENTURE (*q*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the first part; [*tenant for life*], of, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the third part: WHEREAS at a Court holden for the

Recitals: of title of vendor to copyholds:

manor of ——, in the county of ——, on the —— day of ——, 19—, the vendor was admitted tenant of the lands and hereditaments hereby covenanted to be surrendered. TO HOLD the same unto the vendor, his heirs and assigns, according to the custom of the said manor: AND WHEREAS by an indenture of lease, dated, &c., and made, &c., ALL THAT, &c. [*describe parcels from lease*], was demised unto [*original lessee*], his executors, administrators, and assigns, from the —— day of ——, for the term of —— years, at a yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee to be performed and observed: AND WHEREAS by divers mesne assignments or acts in the law, and ultimately by an indenture dated, &c., and made, &c., all the premises comprised in the hereinbefore recited indenture of lease have become vested in the vendor for

of vendor's title to leaseholds:

of settlement:

the residue of the said term of —— years: AND WHEREAS under an indenture of settlement, dated, &c., and made, &c., certain freehold hereditaments therein described now stand limited to uses under which the said [*tenant for life*] is tenant for life in possession, and the trustees are the trustees of such settlement for the purposes of

of agreement for purchase.

the Settled Land Acts, 1882 to 1890: AND WHEREAS the said [*tenant for life*], by virtue of the powers conferred on him by the

(*p*) Under sect. 21 of the Settled Land Act, 1882, capital moneys arising under the Act may be applied according to the direction of the tenant for life, and in default thereof according to the discretion of the trustees (in the latter case subject to any consent required or direction given by the settlement) (sect. 22, sub-sect. (2)), in purchase of land in fee simple or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase (sect. 21, sub-sect. (vii)). Sect. 24 of the same Act contains directions as to how land so acquired shall be conveyed and brought into settlement.

(*q*) Stamp, see *ante*, p. 334, note (*d*).

XXVII. OF COPYHOLDS AND LEASEHOLDS TO TRUSTEES OF A SETTLEMENT UNDER THE SETTLED LAND ACT, 1882.

Settled Land Acts, 1882 to 1890, has agreed with the vendor for the purchase of the said copyhold lands and hereditaments hereby covenanted to be surrendered, and the inheritance thereof in possession, according to the custom of the said manor, and of the said leasehold premises hereby assigned, free from incumbrances, for the price of £——, and has directed the trustees, as such trustees as aforesaid, to apply capital moneys in their hands as such trustees arising under the said Acts from sales from time to time effected of lands and hereditaments comprised in the said indenture of settlement in payment of the said price or sum of £——: AND WHEREAS it has been agreed that for the purpose of the Stamp Act, 1891, the sum of £——, part of the said purchase-money, shall be the consideration for the said copyhold hereditaments, and that the sum of £——, the residue thereof, shall be the consideration for the said leasehold premises. NOW THIS INDENTURE WITNESSETH as follows:—

Apportionment of purchase-money for stamp duty (*r*).

Testatum.

Covenant to surrender copyholds.

1. In pursuance of the said agreement, and in consideration of the sum of £——, being the apportioned part of the said purchase-money for the said copyhold hereditaments now paid by the trustees by direction of the said [*tenant for life*] to the vendor (the receipt whereof is hereby acknowledged), the vendor by the direction of the said [*tenant for life*] hereby, as beneficial owner, covenants with the trustees that he the vendor will forthwith, at the cost of the trustees, their heirs and assigns, surrender into the hands of the lord or lady of the said manor of ——, in the county of ——, according to the custom of the said manor, ALL THAT [*describe parcels according to the description on the court rolls*], to the use of the trustees and their heirs, according to the custom of the said manor, and at and under the rents, fines, heriots, suits, and services therefor due and of right accustomed, nevertheless upon the trusts and subject to the powers and provisions upon and subject to which the same hereditaments and premises ought to be held by reason of the same having been purchased with capital moneys arising under the said indenture of settlement.

Habendum.

2. In consideration of the sum of £——, being the residue of the said purchase-money now paid by the trustees by the like direction to the vendor (the receipt whereof is hereby acknow-

(*r*) See Stamp Act, 1891, ss. 58, 61.

XXVII. OF COPYHOLDS AND LEASEHOLDS TO TRUSTEES OF A SETTLEMENT UNDER THE SETTLED LAND ACT, 1882.

ledged), the vendor, by the direction of the said [*tenant for life*], hereby, as beneficial owner, assigns unto the trustees all the premises demised by the hereinbefore recited indenture of lease, To HOLD the same unto the trustees for the residue of the said term of —— years, at the rent and subject to the covenants and conditions by and in the said indenture of lease reserved and contained, and by the lessee henceforth to be paid, performed, and observed, nevertheless upon the trusts and subject to the powers and provisions upon and subject to which the same premises ought to be held by reason of the same having been purchased with capital moneys arising under the said settlement.

Assignment of leaseholds.

Habendum.

[*Acknowledgment and undertaking as to muniments in schedule*, ante, *p.* 318.]

IN WITNESS, &c.

SCHEDULE OF MUNIMENTS.

XXVIII. CONVEYANCE *by* MORTGAGEE *in* FEE *under the* STATUTORY POWER *of* SALE *or under an* EXPRESS POWER (*s*). (*In note, express* COVENANT *against* INCUMBRANCES *by* MORTGAGEE.)

THIS INDENTURE (*t*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS, by an indenture dated, &c., and made, &c., the hereditaments hereinafter conveyed (with

Parties.

Recitals: of mortgage (*u*);

(*s*) This precedent will apply as well to the case of a sale under Lord Cranworth's Act (23 & 24 Vict. c. 145) where the mortgage was executed prior to the end of 1881, as also to the case of a sale under the C. A. 1881, s. 19, where the mortgage was executed since 1881. The statutory powers under the C. A. 1881, are extended by the C. A. 1911, s. 4, to enable a mortgagee to sell subject to restrictions or reservations, and to sell with or without minerals or easements. As to the statutory powers of mortgagees, see Vol. II., sub-tit. Mortgages, Preliminary Note, p. 4.

(*t*) The stamp will be *ad valorem:* see Preliminary Note, *ante*, p. 307.

(*u*) This deed may be made supplemental to the mortgage, as in Precedent XXIX., so as to avoid the recital of the mortgage.

other hereditaments) were assured to the use of the vendor, his heirs and assigns, subject to a proviso for redemption thereof, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the vendor, his executors, administrators, or assigns, of the sum of £——, with interest thereon at the rate of —— per cent. per annum, on the —— day of —— then next (*x*):

of transfer of mortgage;

AND WHEREAS, by an indenture dated, &c., and made between the said [*original mortgagee*], of the one part, and the vendor of the other part, in consideration, &c., the said [*original mortgagee*] assigned the said sum of £——, and the interest due and to accrue due thereon, unto the vendor, and by the same indenture the said [*original mortgagee*] granted the said hereditaments and premises with the appurtenances unto and to the use of the vendor, his heirs and assigns, subject to such equity of redemption as was then subsisting by virtue of the said indenture of mortgage:

of contract for sale.

AND WHEREAS the vendor, in exercise of the power conferred on him by the said indenture of mortgage [and the statute in that behalf] (*y*), has contracted for the sale to the purchaser of the fee simple in possession of the said hereditaments hereby assured at the price of £——.

Testatum.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as mortgagee (*z*), grants unto the purchaser, ALL THAT, &c.

Conveyance.

(*x*) If the sale is not made under the statutory power, the power of sale in the mortgage will be recited.

(*y*) If the sale is under the express power, the words "and the statute in that behalf" will be omitted.

(*z*) Mortgagees, as well as trustees, give no covenant for title, except that they have not incumbered. As to the covenant implied by the vendor conveying as "mortgagee," see Conveyancing Act, 1881, s. 7 (F). If an express covenant should appear desirable, it will take the following form (to follow the habendum):—

Covenant against incumbrances.

"AND the vendor hereby covenants with the purchaser that he, the vendor, has not done or knowingly suffered, or been party or privy to anything whereby the premises hereinbefore assured, or any part thereof, are, is, or may be affected or incumbered, in title, estate, or otherwise howsoever, or whereby he is prevented from assuring the same premises, or any part thereof, in manner hereinbefore appearing."

XXVIII. BY MORTGAGEE UNDER EXPRESS POWER OF SALE.

[*describe parcels*]. To HOLD the same unto and to the use of the purchaser, his heirs and assigns, discharged from all principal moneys and interest secured by and from all right or equity of redemption, and all claims and demands under the said indenture of mortgage (*a*).

Parcels.

Habendum.

[*Add statement as to value,* ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

XXVIIIa. ASSIGNMENT *of* LEASEHOLDS *by a* MORTGAGEE *under* STATUTORY POWER *of* SALE. (*Where the* MORTGAGE *was made by* DEMISE.)

THIS INDENTURE (*b*), made the —— day of ——,

Parties.

BETWEEN [*mortgagee*], of, &c. (hereinafter called "the vendor"), of the first part; [*trustee to be appointed of nominal reversion*], of, &c., of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part.

Recitals of lease.

WHEREAS, by an indenture of lease, dated, &c., and made between, &c., ALL THOSE messuages, &c. [*parcels*], were demised unto [*lessee*] for the term of —— years, at the yearly rent of £——, and subject to the covenants on the lessee's part and conditions therein contained.

Devolution of the lease;

AND WHEREAS, under or by virtue of divers mesne assignments and acts in the law, and ultimately by an indenture, dated, &c., and made between, &c., the premises comprised in the hereinbefore recited indenture of lease became vested in [*mortgagor*] for the unexpired residue of the said term.

of mortgage.

AND WHEREAS, by an indenture of mortgage, dated, &c., and made between the said [*mortgagor*], of the one part, and the vendor of the other part, the said [*mortgagor*] demised the premises comprised in the said indenture of lease unto the vendor for all the residue then unexpired of the said term of —— years, except the last day thereof, subject to a proviso for the redemption thereof, on payment to the vendor, his executors, administrators,

---

(*a*) As to the mortgagee's receipt being a valid discharge for the purchase-money, see C. Act, 1881, s. 22.

(*b*) Stamp, *ad valorem:* see *ante,* p. 307. If the mortgage contained an irrevocable power of attorney to the mortgagee to assign the reversion, and it is intended that this power shall be exercised, the mortgagor will, if living, be made a party to the assignment which will be signed by the mortgagee in his name as attorney in his behalf. If the mortgagor is dead, the attorney will assign the reversion in his behalf.

or assigns, of the sum of £——, with interest thereon, on a day now past; AND the said [*mortgagor*] thereby declared himself a trustee of the reversion thereby reserved of the said term of —— years in the same premises for the vendor, his executors, administrators, and assigns, subject to such equity as might be subsisting therein by virtue of the said proviso for redemption; AND thereby authorised the vendor to appoint a new trustee of the said reversion in the place of the said [*mortgagor*] or his assigns.

Agreement for sale.

AND WHEREAS the vendor has agreed with the purchaser for the sale to him for the sum of £—— of the premises comprised in the hereinbefore recited indenture of lease for all the residue now unexpired of the said mortgage term, and for all such estate and interest in the reversion by the said indenture of mortgage reserved as aforesaid, as is now vested in the vendor; AND upon the treaty for the said sale it was agreed that the vendor should appoint the said [*trustee*] to be a trustee of the said reversion so reserved as aforesaid, and that the said [*trustee*] should join in these presents in manner hereinafter appearing.

Testatum.

NOW THIS INDENTURE WITNESSETH as follows:—

Assignment of mortgage term.

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor, as mortgagee, in exercise of the power conferred upon him by the said indenture of mortgage [and the statute in that behalf] (*bb*), and of every other power enabling him, doth hereby assign unto the purchaser, ALL and singular the hereditaments and premises comprised in and demised by the hereinbefore recited indenture of lease, TO HOLD unto the purchaser henceforth for all the residue now unexpired of the said mortgage term, and for all such estate and interest in the reversion by the said indenture reserved of the said term of —— years as the vendor is entitled to or has power to assign, discharged from all principal moneys and interest secured by and from all claims and demands under the said mortgage.

Appointment of trustee of reversionary term.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the vendor in exercise of the power in this behalf given to him by the said indenture of mortgage, and of every other power enabling him, hereby appoints the said [*trustee*]

(*bb*) See *ante*, p. 369, note (*y*).

XXVIIIa. OF LEASEHOLDS BY A MORTGAGEE UNDER STATUTORY POWER OF SALE.

to be a trustee in the place of the said [*mortgagor*] for the purposes of the said mortgage.

Vesting declaration.

3. In pursuance of the statutory provision in this behalf the vendor declares that, ALL and singular the premises hereby assigned shall vest in the said [*trustee*] for all the estate and interest in the reversion so reserved by the said mortgage, and made subject to the trusts thereby declared as aforesaid upon the trusts applicable thereto by virtue of the said mortgage.

Assignment of reversionary term.

4. The said [*trustee*], by the direction of the vendor, hereby assigns unto the purchaser, ALL the estate and interest whatsoever of him the said [*trustee*] of and in all the premises so vested in him as aforesaid.

Declaration of merger.

5. The purchaser hereby declares that the unexpired residue of the said mortgage term shall merge in the unexpired residue of the said reversionary term.

[6. *Statement as to value, if required, see* ante, *p.* 317.]

IN WITNESS, &c.

XXIX. CONVEYANCE *by* TRANSFEREE *of a* MORTGAGE *selling under the* STATUTORY POWER. (*By* SUPPLEMENTAL DEED.)

Parties.

THIS INDENTURE (*c*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Supplemental to mortgage;

AND supplemental to an indenture of mortgage, dated the —— day of ——, and made between [*mortgagor*], of the one part, and [*mortgagee*], of the other part, whereby the messuages, lands, and hereditaments hereinafter described and hereby conveyed were assured unto and to the use of the said [*mortgagee*], his heirs and assigns, by way of mortgage for securing payment to the said [*mortgagee*] on the —— day of ——, of the sum of £——, with interest;

and to transfer of mortgage;

AND ALSO supplemental to an indenture of transfer to the vendor of the said mortgage, dated, &c., and made between the said [*mortgagee*], of the one part, and the vendor, of the other part,

Testatum.

WITNESSETH that, in consideration of the sum of £——, paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged),

Conveyance.

the vendor, in exercise of the power in that behalf conferred upon him by the said indenture of mortgage [and the statute in

(*c*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

that behalf] (*d*), and of every or any other power him thereunto enabling, hereby, as mortgagee, grants unto the purchaser, ALL THAT [*describe parcels*]: TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, discharged from all principal moneys and interest secured by, and all right or equity of redemption, claims and demands, under the said indenture of mortgage.

XXIX. BY TRANSFEREE OF MORTGAGE UNDER STATUTORY POWER OF SALE.

Parcels.

Habendum.

Freed from mortgage.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

XXX. CONVEYANCE *of an* EQUITY *of* REDEMPTION (*e*), *with* COVENANT *by the* PURCHASER *to* PAY *the* MORTGAGE DEBT *and* INDEMNIFY *the* VENDOR.

THIS INDENTURE (*f*), made, &c., BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part; and [*pur-*

Parties.

(*d*) See *ante*, p. 369, note (*y*).

(*e*) The following precautions should be taken by the purchaser of an equity of redemption:—1st. To ascertain from the mortgagee the state of the account between him and the mortgagor. 2ndly. To obtain the mortgagee's assurance that he has received no notice of any other incumbrance. 3rdly. To give to the mortgagee notice of the purchase. As regards the first two precautions, although the mortgagee is not bound to give the information, yet his refusal would of course excite suspicion. As to the importance of giving notice to the mortgagee having the legal estate as a protection to the purchaser against consolidation, see *Vint* v. *Padgett*, 2 De G. & J. 611; *Pledge* v. *White*, [1896] A. C. 187. It will also be prudent to ascertain that the mortgagee has no mortgage on any other estate of the mortgagor; and that the mortgagor has not made any mortgage of any other estate to any other person, as the mortgagee of the estate purchased may acquire the charge on such other estate and consolidate. Sect. 17 of the Conveyancing Act, 1881, which restricts the right of consolidation, applies "only if and so far as a contrary intention is not expressed in the mortgage deeds or one of them, and only applies where the mortgages or one of them are or is made after the commencement of the Act": sub-sects. (2) and (3). Where sect. 17 does not apply the equitable rule as to consolidation remains: *Hughes* v. *Britannia, &c. Society*, [1906] 2 Ch. 607. See, as to consolidation, Wolstenholme's Conveyancing, &c. Acts, 10th ed. p. 70; Elph. Introd. 136; *Sharp* v. *Rickards*, [1909] 1 Ch. 109.

Precautions to be taken by the purchaser of an equity of redemption.

(*f*) Stamp, *ad valorem* on the amount of the purchase-money, *i.e.*, the amount paid to the vendor for the equity plus the mortgage debt (Stamp Act, 1891, s. 57). If the mortgagee joins in the conveyance to release the vendor from his covenants and to take fresh covenants from the

Stamp and I. V. Duty.

XXX. OF EQUITY OF REDEMPTION IN FEE.

chaser], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS by an indenture of mortgage dated the —— day of ——, 19—, and made between the vendor, of the one part; and [*mortgagee*], of, &c., of the other part; in consideration of the sum of £—— to the vendor paid by the said [*mortgagee*], the vendor covenanted with the said [*mortgagee*] to pay to him on the —— day of ——, 19—, the sum of £—— with interest thereon in the meantime at the rate of —— per cent. per annum, and also so long after that date as any principal money should remain due thereunder, to pay to him interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year; AND by the indenture now in recital the vendor granted the hereditaments hereby assured, unto and to the use of the said [*mortgagee*], his heirs and assigns, subject to a proviso for redemption of the said hereditaments upon payment by the vendor, his heirs, executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the sum of £—— and interest, on the —— day of —— then next ensuing; AND WHEREAS the said principal sum of £—— still remains owing upon the aforesaid security, but all interest in respect thereof has been duly paid up to the —— day of —— last past (*g*); AND WHEREAS the purchaser has contracted with the vendor for the purchase of the said hereditaments in fee simple, subject, nevertheless, to the said principal sum of £—— and interest secured by the said indenture of mortgage, at the price of £——, which several sums of £—— and £—— make together the sum of £—— (*h*). NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby

Recital of mortgage.

Money due.

Contract for purchase subject to mortgage.

Testatum.

Consideration.

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purchaser for payment of principal and interest, then a further stamp of 6*d.* for every 100*l.* of the mortgage debt will be payable by reason of the covenant to pay the same (Stamp Act, 1891, Sched. I.), but not exceeding 10*s.* See Revenue Act, 1903, s. 7.

Increment value duty will be payable. See Finance (1909-10) Act, 1910, ss. 2 (1) and 2 (2). And see also *Hallyar* v. *I. R. Commrs.*, [1914] 1 K. B. 528.

(*g*) The purchaser will, of course, ascertain this fact.

(*h*) This is the sum on which the *ad valorem* duty must be paid if the interest has been paid up to date; but if there are arrears of interest, then, in calculating the stamp duty, such arrears should be taken into account as forming part of the consideration.

acknowledged), and in consideration of the covenant hereinafter contained on the part of the purchaser, the vendor, as beneficial owner, hereby conveys unto the said purchaser, ALL THAT, &c. [*describe parcels*], TO HOLD the same, subject to the hereinbefore recited indenture of mortgage, and to the payment of the said principal sum of £——, and the interest now and hereafter to become due in respect thereof, unto and to the use of the purchaser, his heirs and assigns. AND in consideration of the premises the purchaser hereby covenants with the vendor, that the purchaser, his heirs, executors, administrators, or assigns, will pay to the said [*mortgagee*], his executors, administrators, or assigns, the principal sum of £—— secured by the said indenture of mortgage, and all interest now due or which hereafter shall accrue due in respect thereof; AND that he, his heirs, executors, administrators, and assigns will, at all times hereafter, effectually indemnify the vendor, his heirs, executors, and administrators, against the said principal sum of £——, and all interest thereon, and against all actions, proceedings, claims, and demands for or by reason of the non-payment thereof (*i*).

XXX. OF EQUITY OF REDEMPTION IN FEE.

Grant.

Parcels.

Habendum.

Purchaser covenants:

to pay the mortgage-money;

and to indemnify vendor therefrom.

[*Add statement as to value*, ante, *p.* 317, *if appropriate*.]

IN WITNESS, &c.

XXXI. RELEASE *by* MORTGAGOR *to* MORTGAGEE *of the* EQUITY *of* REDEMPTION *of* FREEHOLDS INDORSED *on the* MORTGAGE DEED.

THIS INDENTURE (*k*), made the —— day of ——, 19—, BETWEEN the within named [*mortgagor*], of the one part; and the

Parties.

(*i*) Though it should seem that a vendor is entitled to a covenant of this nature, yet, independently of express contract, the purchaser of an equity of redemption would be bound to indemnify the vendor against the mortgage debt: *Waring* v. *Ward*, 7 Ves. 332; *Adair* v. *Carden*, L. R. 29 Ir. 469; *Bridgeman* v. *Daw*, 40 W. R. 253; but in the case of a reversionary interest this obligation is conditional upon the interest vesting in possession: *Mills* v. *United Counties Bank*, [1912] 1 Ch. 231. Sometimes the indemnity is taken by a separate deed, as the conveyance goes into the custody of the purchaser.

Purchaser of equity of redemption bound to pay mortgage debt.

The legal estate is in the mortgagee and does not pass by this conveyance; the purchaser will not, therefore, require to be registered as proprietor if the land is in a "compulsory district."

(*k*) The *ad valorem* stamp must, of course, cover the whole purchase-

Stamp.

XXXI. RELEASE OF EQUITY OF REDEMPTION INDORSED.

within named *mortgagee*], of the other part: WHEREAS the within mentioned principal sum of £—— and an arrear of interest amounting to the sum of £——, now remain due and owing from the said *mortgagor* to the said *mortgagee* upon the within mentioned security: AND WHEREAS the said [*mortgagor*], in consideration of the sum of £—— so due for principal and interest as aforesaid, and of the payment by the said *mortgagee*] to the said *mortgagor*] of the sum of £——, which several sums of £—— and £—— together make the sum of £——, has agreed to release to the said *mortgagee*] the equity of redemption in the within mentioned hereditaments: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the said sum of £—— now paid by the said [*mortgagee*] to the said [*mortgagor*] (the receipt whereof is hereby acknowledged), and of the release hereinafter contained by the said *mortgagee* to the said [*mortgagor*] of the principal sum of £——, and of the said sum of £—— interest moneys so owing as aforesaid, the said *mortgagor*] hereby, as beneficial owner, grants and releases unto the said *mortgagee*], ALL and singular the said messuages, lands, and hereditaments within mentioned, TO HOLD the same unto and to the use of the said *mortgagee*], his heirs and assigns, discharged of and from all right or equity of redemption under the within written indenture: AND in consideration of the premises, the said *mortgagee* hereby releases the said *mortgagor*], his heirs, executors, administrators, and assigns, from the said principal sum of £——, and all interest secured by the within written indenture, and from all actions, proceedings, claims, demands, and liability in respect thereof or otherwise under the within written indenture of mortgage (*l*).

Recitals: of default; of agreement for purchase.

Testatum.

Mortgagor releases equity of redemption to mortgagee and his heirs.

Habendum.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

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money, including the principal and interest released: see *ante*, p. 373, note (*f*). As to the stamp where the mortgage debt exceeds the purchase-money, Alpe, 12th ed. 122. As to I. V. Duty, see last precedent, note (*f*).

(*l*) If it is desired that the mortgage debt should be kept on foot as a protection against mesne incumbrances, add here:—

Proviso that mortgage debt shall not be merged.

"PROVIDED ALWAYS, and the said [*mortgagee*] hereby declares that the said principal sum of £——, and all interest henceforth

XXXII. CONVEYANCE *in* FEE *by* MORTGAGOR *and* MORTGAGEE *to* PURCHASER, *the* MORTGAGE *being* PAID OFF (*by* SUPPLEMENTAL DEED). VARIATION *where the* MORTGAGE *is for a* TERM *which the* MORTGAGEE SURRENDERS.

XXXII. IN FEE BY MORTGAGOR AND MORTGAGEE.

THIS INDENTURE (*m*), made the —— day of ——, in the year — , BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mortgagee") (*n*), of the first part; [*vendor*], of, &c. (hereinafter called "the vendor"), of the second part; [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: AND supplemental to an indenture of mortgage (*o*), dated the — - day of ——, and made between the vendor, of the one part, and the mortgagee, of the other part, for securing unto the mortgagee the sum of 1,000*l*., with interest for the same, on the hereditaments hereinafter described and hereby conveyed: AND WHEREAS the said principal sum of 1,000*l*. is now owing upon the security of the said indenture of mortgage, but all interest for the same has been paid up to the day of the date of these presents, as the

Parties.

Recitals: of money due on mortgage;

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to accrue due in respect thereof, shall not merge in the inheritance of the said hereditaments and premises hereby released, but shall remain and continue as a subsisting charge thereon, so as to be a protection against all mesne incumbrances, charges, estates, and claims whatsoever, if any such there be."

As to non-merger of a mortgage debt on purchase by a mortgagee of the equity of redemption, see *Adams* v. *Angell*, 5 Ch. D. 634; and see further, as to merger, *Thorne* v. *Cann*, [1895] A. C. 11; *Whiteley* v. *Delaney*, [1914] A. C. 132.

(*m*) Stamp, *ad valorem* on amount of purchase-money: see Preliminary Note, *ante*, p. 307. Stamp.

(*n*) In arranging the order of the parties to a deed, it is usual to place persons having the legal estate before those who have equitable interests only, and persons having freehold estates before those who have chattel interests. Arrangement of parties.

(*o*) The mortgage debt being wholly paid off out of the purchase-money, the mortgage deed will be delivered over to the purchaser, and retained in his custody; there is no objection, therefore, to the conveyance being in the form of a supplemental deed. If, however, the mortgage debt is not wholly paid off, but remains on the security of other property of the vendor, the mortgage deed will continue in the possession of the mortgagee, and the conveyance to the purchaser should be by an independent deed reciting the mortgage: see next precedent.

XXXII. IN FEE BY MORTGAGOR AND MORTGAGEE.

of contract for purchase.

Testatum.

The mortgagee, in consideration of the mortgage money, and the mortgagor, in consideration of the remainder of the purchase-money, convey the estate to the purchaser in fee.

mortgagee doth hereby acknowledge: AND WHEREAS the purchaser has agreed with the vendor for the purchase of the inheritance in fee simple of the said hereditaments, for the price of 1,500*l.*, out of which sum it has been agreed that the said sum of 1,000*l.* owing to the mortgagee as aforesaid shall be discharged: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of 1,000*l.* paid by the purchaser (at the request and by the direction of the vendor) to the mortgagee (the receipt of which sum of 1,000*l.* the mortgagee hereby acknowledges); AND ALSO in consideration of the sum of 500*l.* paid by the purchaser to the vendor (the receipt of which sum of 500*l.*, and the payment of which said sum of 1,000*l.*, in manner aforesaid, making together the said purchase-money of 1,500*l.*, the vendor hereby acknowledges); the mortgagee, as mortgagee (*p*), by the direction of the vendor, hereby grants, and the vendor hereby, as beneficial owner, grants and confirms unto the purchaser and his heirs, ALL THAT, &c. [*describe parcels* (*q*)]; TO HOLD the premises hereinbefore conveyed unto and to the use of the purchaser, his heirs and assigns, discharged from all principal moneys and interest secured by, and all claims and demands under the said indenture of mortgage (*r*).

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

(*p*) If the mortgage is for a term, which is to be surrendered, substitute for the words "by the direction of the vendor hereby grants," the following:—

Variation, where mortgage is for a term.

"by the direction of the vendor, directing as beneficial owner, and to the intent that the residue of the said term of —— years created by the said indenture of mortgage may be merged in the reversion of the hereditaments hereby conveyed, hereby assigns and surrenders; and the said [*vendor*], &c."

The surrender is sometimes made by a separate *testatum*, but it is more usual, for the sake of brevity, to incorporate it with the conveyances, as in the text.

(*q*) If the premises are in the occupation of a tenant from year to year, say,

"which premises are now in the occupation of [A. B.], as tenant from year to year to the vendor."

(*r*) A proviso against merger of the mortgage debt may here be inserted if desired: see *ante*, p. 376, note (*l*).

XXXIII. CONVEYANCE *of* FREEHOLDS *by a* MORTGAGOR *and the* EXECUTORS *of a* DECEASED MORTGAGEE (*s*) *to a* PURCHASER *in* FEE, *where* PART ONLY *of the* PURCHASE-MONEY *is* PAID *to the* EXECUTORS. VARIATIONS *where the* WHOLE *of the* PURCHASE-MONEY *is* PAID *to the* MORTGAGOR.

XXXIII. IN FEE BY MORTGAGOR AND EXECUTORS OF MORTGAGEE.

THIS INDENTURE (*t*), made the —— day of ——, 19—, BETWEEN [*executor*], of, &c., and [*executor*] (*u*), of the first part; [*mortgagor*], of, &c. (hereinafter called "the vendor"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS, by an indenture of mortgage, dated, &c., and made between the vendor, of the one part, and [*mortgagee*], of the other part, the hereditaments hereby conveyed were, with other hereditaments, assured by way of mortgage unto the said [*mortgagee*] in fee simple, to secure to the said [*mortgagee*] payment of the sum of £—— and interest as therein

Parties (*u*).

Recitals: of mortgage;

(*s*) As to the devolution of trust and mortgage estates, see Conveyancing Act, 1881, s. 30. This enactment, however, does not apply to land of copyhold or customary tenure vested in the tenant on the Court rolls on trust or by way of mortgage, see the Copyhold Act, 1894, s. 88. Where, therefore, the mortgagee has been admitted his heir must be a party to the conveyance to convey the legal estate: see Wolstenholme's Conveyancing, &c. Acts, 10th ed. p. 99. In the case of freeholds also where the mortgagee died before 1882, his heir or devisee of mortgage estates must join in the conveyance to convey the legal estate, in which case the heir or devisee would be party of the first part and the executors parties of the second part, and in the recital of the will the following words:—

Devolution of trust and mortgage estates.

"AND he also thereby devised all estates vested in him by way of trust or under any mortgage to the said [*executors*]" [*or to any other devisee, as the case may be*],

or the words,

"but the will contained no devise of estates vested in the testator by way of trust or under any mortgage"

should be added; and if there was no devise of trust or mortgage estate, then the recital of the testator's death should run as follows:—

"AND WHEREAS the said [*mortgagee*] died on the —— day of ——, leaving the said [*heir-at-law*], his eldest son, him surviving" [*or*, "leaving the said [*heir-at-law*], his brother and heir-at-law, him surviving"].

(*t*) Stamp, *ad valorem* on the purchase-money: see *ante*, p. 307.

(*u*) As to arrangement of parties, see *ante*, p. 377, note (*n*).

XXXIII. IN FEE BY MORTGAGOR AND EXECUTORS OF MORTGAGEE.

mentioned: And whereas the said [*mortgagee*] duly made and executed his will, dated, &c., and thereby appointed the said [*executors*] to be the executors thereof: And whereas the said [*mortgagee*] died on the —— day of ——, 19—, without having revoked or altered his said will, which was on the —— day of ——, 19—, duly proved in the Principal [—— District] Probate Registry, by the said [*executors*]: And whereas the vendor has contracted with the purchaser for the sale of the hereditaments hereinafter described and hereby conveyed in fee simple, free from incumbrances, for the sum of £——: And whereas the said sum of £—— now remains due on the security of the hereinbefore recited indenture of mortgage, but all interest thereon has been paid up to the date of these presents; And whereas it has been agreed that the sum of £——, part of the said purchase-money, shall be paid to the said [*executors*], in part payment of the said sum of £——, and that they shall concur in these presents in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreements, and in consideration of the sum of £—— paid by the purchaser, by the

of will of mortgagee;
of death of mortgagee;
of agreement for sale:
of state of mortgage debt;
of agreement for application of part of the purchase-money in part payment of mortgage debt (*v*).
Testatum.
Consideration (*w*).
Variation.

(*v*) Of course trustees or executors should be very careful as to the sufficiency of the remaining security before agreeing to the payment of any part of the purchase-money to the mortgagor, as they will undoubtedly incur responsibility by parting with part of the security without, at least, a proportionate reduction of the mortgage debt. In the case of a sale of a piece of land, forming a small part of the mortgaged property, it is often inconvenient to mortgagees to receive the purchase-money in part payment of the mortgage debt. If the whole of the purchase-money is to be paid to the mortgagor, substitute the following for the last two recitals in the text:—

"And whereas the said [*executors*], being satisfied that the said principal sum and interest secured by the hereinbefore recited indenture is amply secured by and on the property therein comprised other than the hereditaments hereinafter described and hereby conveyed, have agreed that the whole of the said purchase-money shall be paid to the vendor."

(*w*) If the whole of the purchase-money is to be paid to the mortgagor, say,

"In consideration of the sum of £—— now paid by the purchaser by the direction of the said [*executors*] to the vendor (the receipt and payment whereof in manner aforesaid the vendor and the said [*executors*] respectively acknowledge)."

XXXIII. IN FEE BY MORTGAGOR AND EXECUTORS OF MORTGAGEE.

direction of the said [*executors*], in manner following, that is to say, the sum of £——, part thereof, to the said [*executors*], in part payment of the said principal sum of £ - -, so due and owing on the security of the said indenture of mortgage as aforesaid (the receipt of which sum of £—— the said [*executors*] hereby acknowledge), and the sum of £ —, the residue thereof, to the vendor (the receipt and payment, in manner aforesaid, of which said sums of £—— and £—— the vendor doth hereby acknowledge), the said [*executors*] (*x*) hereby, as mortgagees, grant, and the vendor hereby, as beneficial owner, grants and confirms unto the purchaser, ALL THAT, &c. [*describe parcels*]; TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, freed and discharged from all principal and interest moneys and from all claims and demands under the said indenture of mortgage; AND the said [*executors*] hereby acknowledge the right of the purchaser to production of the several deeds and documents mentioned in the schedule hereto.

Habendum.

Freed from mortgage.

Acknowledgment as to deeds.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

If the whole of the purchase-money is to be paid to the executors, say, "In consideration of the sum of £—— paid by the purchaser, by the direction of the vendor, to the said executors (the receipt and payment whereof, in manner aforesaid, the said [*executors*] and the vendor hereby respectively acknowledge)."

(*x*) If the heir joins, say,

"The said [*heir-at-law*] by the direction of the said [*executors*] hereby as trustee grants, and the said [*executors*] hereby as mortgagees convey and release, and the vendor hereby," &c.

XXXIV. BY ADMINISTRATOR OF MORTGAGOR AND MORTGAGEE.

XXXIV. CONVEYANCE *by* ADMINISTRATOR *of a* DECEASED MORTGAGOR *and a* MORTGAGEE *in* PERFORMANCE *of a* CONTRACT *for* SALE *by an* INTESTATE (*y*).

Parties.

THIS INDENTURE (*z*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the first part; [*administrator*], of, &c., of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part:

Recitals: of mortgage;

WHEREAS by an indenture dated, &c., and made, &c., in consideration of £ — paid by the mortgagee to the said [*mortgagor*], the said [*mortgagor*] granted the hereditaments hereinafter conveyed to the use of the mortgagee, his heirs and assigns, subject to a proviso for the redemption of the said hereditaments on payment by the said [*mortgagor*], his executors, administrators, and assigns, to the mortgagee, his executors, administrators, or assigns, of the sum of £——, with

of contract for sale;

interest at the rate therein mentioned; AND WHEREAS the said [*mortgagor*], on the —— day of ——, 19—, entered into a contract with the purchaser for the sale to him of the fee simple in possession, free from incumbrances, of the said hereditaments

of death of vendor intestate;

hereby conveyed, at the price of £——; AND WHEREAS the said [*mortgagor*] died on the —— day of ——, 19—, intestate, and letters of administration of his personal estate were, on the —— day of ——, 19—, granted out of the Principal [—— District] Probate Registry to the said [*administrator*];

of acceptance of title, and that contract remained unexecuted;

AND WHEREAS the title of the said [*mortgagor*] had been accepted by the purchaser, but the said contract remained unexecuted at the date of the death of the said [*mortgagor*], no purchase-money having been paid or conveyance executed in pursuance thereof;

of request for completion by purchaser;

AND WHEREAS the purchaser has requested the said [*administrator*] and the mortgagee to make such conveyance as

of state of

hereinafter appears; AND WHEREAS the sum of £—— still re-

(*y*) See *post*, Precedent LVI. (Conveyance by Executors in execution of a Contract by their Testator) and the notes thereto. In the present case, as the legal estate is outstanding, sect. 4 of the Conveyancing Act, 1881, is not required to enable the transaction to be carried out, since the mortgagee conveys the legal estate and the administrator can give a discharge for the purchase-money: see Wolstenholme's Conveyancing, &c. Acts, 10th ed. p. 29.

(*z*) Stamp, *ad valorem:* see Preliminary Note, *ante*, p. 307.

mains due and owing to the mortgagee upon the security of the said indenture of mortgage, but all interest thereon has been paid up to the date of these presents. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said contract, and in consideration of the sum of £—— paid to the mortgagee by the purchaser at the request of the said [*administrator*] (the receipt whereof the said [*mortgagee*] hereby acknowledges), and in consideration of the sum of £—— paid to the said [*administrator*] by the purchaser (the payment and receipt of which sums of £—— and £——, making together the sum of £——, the said [*administrator*] hereby acknowledges), the mortgagee, by the direction of the said [*administrator*], hereby as mortgagee grants, and the said [*administrator*] hereby, as the personal representative of the said [*mortgagor*], deceased, grants and confirms unto the purchaser, ALL THOSE [*describe parcels*], and also all other (if any) the hereditaments and tenements comprised in the hereinbefore recited indenture of mortgage; TO HOLD all the premises unto and to the use of the purchaser, his heirs and assigns, freed and discharged from all principal moneys and interest secured by and from all claims and demands under the said indenture of mortgage.

XXXIV. BY ADMINISTRATOR OF MORTGAGOR AND MORTGAGEE.

mortgage debt.

Testatum.

Conveyance.

[*Add statement as to value,* ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

XXXV. CONVEYANCE *by* MARRIED WOMAN SEISED *in* FEE (*who was* MARRIED BEFORE *the Married Women's Property Act,* 1882, *came into operation*), *with the* CONCURRENCE *of the* HUSBAND (*a*).

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*vendor's husband*], of, &c., and [*vendor*] his wife (*c*),

Parties.

(*a*) As to freehold land of which a woman married before 1883 is registered as proprietor, see Land Transfer Act, 1875, ss. 44 and 83 (4); and L. T. R. 338—340. As to leaseholds in the like case, the husband is entitled to be registered as proprietor in her place, see L. T. Act, 1875, s. 45; but sects. 44, 45, and 83 (4), do not apply to married women married on or after 1st January, 1883, or to property to which a married woman is entitled for her separate use.

(*b*) Stamp, *ad valorem:* see *ante,* p. 307.

(*c*) This deed must be acknowledged by the vendor, under 3 & 4 Will. 4,

Acknowledgment by

XXXV. BY MARRIED WOMAN MARRIED BEFORE 1ST JANUARY, 1883.

of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*testator*], late of, &c., deceased, by his will, dated, &c., devised the hereditaments herein-

Recitals (*d*).

married woman.

c. 74, ss. 77, 79, before one Commissioner: see Conveyancing Act, 1882, s. 7. A married woman who was married since the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), came into operation (*i.e.*, the 1st of January, 1883), or whose title accrued since that date, may deal with her real estate as if she were a *feme sole;* but if she was married or if her title accrued previously (as to which, see *Reid* v. *Reid,* 31 Ch. D. 402; *Re Bacon,* [1907] 1 Ch. 475), her husband's concurrence will be necessary to pass the legal estate, even though she is entitled to the property to her separate use without restraint on anticipation, unless the legal estate is vested in trustees, in which case they must concur in order to vest it in the purchaser; but even so, the husband's concurrence should be obtained, if possible, by way of confirmation, so as to pass any interest in the land which may have been created by his wife in his favour, and also so as to obtain his implied covenants for title. A mere *spes successionis* is not a contingent title within sect. 5 of the Act: *Re Parsons,* 45 Ch. D. 51; and see *Re Green,* [1911] 2 Ch. 275. The acknowledgment should be in the following form prescribed by the Conveyancing Act Rules of 1882:—

Memorandum of acknowledgment.

"This deed was this day produced before me and acknowledged by [*insert names in full of married woman or women*] therein named, to be her act and deed [their several acts and deeds]; previous to which acknowledgment[s] the said —— was [were] examined by me, separately and apart from her husband [their respective husbands], touching her [their] knowledge of the contents of the said deed, and her [their] consent thereto, and she [each of them] declared the same to be freely and voluntarily executed by her [and I declare that I am not interested or concerned, either as a party or as a solicitor or clerk to the solicitor for one of the parties, or otherwise in the transaction giving occasion for the said acknowledgment].

WITNESS my hand this —— day of ——, 19—.

(Signed) A. B.,

A judge, &c., *or* a perpetual Commissioner, *or* a Special Commissioner, *as the case may be.*

The declaration at the foot of the acknowledgment is to be used when it is taken by any person other than a judge. In the case of registered land, where the wife was married and her title accrued before the

(*d*) See note (*d*), next page.

XXXV. BY MARRIED WOMAN MARRIED BEFORE 1ST JANUARY, 1883.

after described to the use of [A. B.] his wife, since deceased, for her life, with remainder to the use of the said [*vendor*], by her then name of [*maiden name*], and her heirs and assigns: AND WHEREAS [*recite death of testator and probate of his will*, ante, *p.* 361]: AND WHEREAS the said [A. B.] died on the —— day of ——, 18—: AND WHEREAS the said [*vendor*], on the —— day of ——, 18—, intermarried with the said [*husband*]: AND WHEREAS the said [*husband*] and [*vendor*] have agreed with the purchaser for the sale to him of the hereditaments hereby conveyed in fee simple in possession, free from incumbrances: NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £—— paid by the purchaser to the said [*husband*] and [*vendor*] (the receipt whereof the said [*husband*] and [*vendor*] hereby acknowledge), the said [*vendor*] hereby, as beneficial owner (*e*), with the concurrence of the said [*husband*], grants, and the said [*husband*] hereby, as beneficial owner (*e*), grants and confirms unto the purchaser, ALL THAT, &c. [*parcels*], TO HOLD the same unto and to the use of the purchaser, his heirs and assigns (*f*).

of will, death and probate; of death of widow; of marriage of vendor (*d*); of agreement for sale.

Testatum.

Conveyance.

Parcels.

Habendum.

[*Add statement as to value*, ante, *p.* 317, *if appropriate*.]

IN WITNESS, &c.

Married Women's Property Act, 1882, the registration will be in the joint names of the husband and wife, and no registered disposition can take place until the wife has been examined in the prescribed manner: see L. T. Act, 1875, s. 83 (4); L. T. R. 338—340; and Forms 71, 72.

Appointment by married woman.

If a married woman conveys in exercise of a general power of appointment only, the conveyance will not differ in form from an ordinary conveyance by appointment; if she conveys by way of appointment and grant, it is advisable that her husband should concur in the grant. For a form of conveyance by appointment and grant, see *ante*, Precedent IV., p. 321.

(*d*) This recital is to show that the marriage took place, and that the wife's title accrued before 1883.

(*e*) The covenants implied in the deed in the text are those provided for by the Conveyancing Act, 1881, s. 7, sub-s. (3).

Acknowledgment and undertaking as to deeds.

(*f*) If any deeds are retained it would seem that they would be in law the property of the husband in right of his wife, and accordingly the acknowledgment for their production and undertaking for their safe custody should be by him as the person retaining the deeds; it is, however, usual and proper to make the wife join in the acknowledgment and undertaking, so as to avoid any question on the point.

XXXVI. BY MARRIED WOMAN MARRIED SINCE 31ST DECEMBER, 1882.

XXXVI. CONVEYANCE *of* FREEHOLDS *by a* MARRIED WOMAN SEISED *in* FEE (*who was* MARRIED AFTER *the Married Women's Property Act*, 1882, *came into* OPERATION)—VARIATIONS *where the* HUSBAND JOINS IN *the* CONVEYANCE *by way of* CONFIRMATION, *and to give* IMPLIED COVENANTS *for* TITLE (*h*).

Parties.

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [*vendor*], the wife of [*husband*], of, &c. (hereinafter called "the vendor"), of the one [*or*, first] part; [the said [*husband*], of the second part;] and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other [*or*, third] part:

Recitals: of marriage of vendor; of vendor's title and agreement for sale of land; [of agreement by husband to concur].

WHEREAS the vendor intermarried with the said [*husband*] on the —— day of ——, 1884: AND WHEREAS the vendor, being seised in her own right of the hereditaments hereinafter described, has agreed to sell to the purchaser the fee simple of the same, free from incumbrances, at the price of £——: [AND WHEREAS the said [*husband*] has consented, at the request of the vendor, and for the satisfaction of the purchaser, to join in these presents for the purposes and in manner hereinafter appearing]:

Testatum.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants [and the said [*husband*], for the purpose as well of confirming the conveyance so made by the vendor as also of including and implying in these presents covenants on his part for title to and further assurance of the hereditaments hereby conveyed, as beneficial owner conveys and confirms] unto the purchaser ALL THAT [*describe parcels*], TO HOLD the same unto and to the use of the purchaser, his heirs and assigns.

Conveyance.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

(*h*) A married woman married since the 31st December, 1882, is competent of herself to sell and convey her real and personal property: see *ante*, p. 384; but it may be advisable to obtain the husband's concurrence, if he is willing to give it. As to registered land, see L. T. Act, 1875, s. 87.

(*i*) Stamp, *ad valorem:* see *ante*, p. 307.

XXXVII. CONVEYANCE *on* SALE *of* FREEHOLDS *by* COMMITTEE *of* LUNATIC'S ESTATE (*k*).

XXXVII. OF LANDS OF A LUNATIC BY HIS COMMITTEE.

THIS INDENTURE (*l*), made the —— day of ——, 19—, BETWEEN [*lunatic*], of, &c., a person of unsound mind acting by [*committee*], of, &c., the committee of his estate (*m*) (hereinafter called "the committee"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the said [*lunatic*] is seised of or otherwise well entitled to the lands and hereditaments hereby conveyed: AND WHEREAS the committee, as such committee (*n*) as aforesaid, has agreed with the purchaser for the sale to him of the hereditaments hereby conveyed (being part of the freehold property of the said [*lunatic*]) at the price of £——, but such contract was made subject to the proper consent and sanction in that behalf being obtained: AND WHEREAS by an order made in the matter of the said lunacy on the —— day of ——, it was ordered that the said provisional contract should be carried into effect on behalf of the said [*lunatic*], and that the purchaser should pay into Court to the credit, &c., the said sum of £—— and any interest which should become payable thereon under the provisions of the said provisional contract; AND that upon payment as aforesaid the committee should execute a proper conveyance of the said lands and hereditaments comprised in the said contract, and that such conveyance be settled and approved by the Masters in Lunacy on behalf of the said [*lunatic*]: AND WHEREAS the purchaser, on the —— day of ——, paid the sum of £—— into Court to the credit, &c., but no interest became payable on the said sum of £—— under the provisions of the said provisional contract: AND WHEREAS ——, Esq., one of the Masters

Parties.

Recitals; of title of lunatic to lands;

of conditional contract for sale;

of order approving contract for sale;

of payment of purchase-money into Court;

of approval of conveyance

(*k*) See the Lunacy Act, 1890, ss. 116, 117, 120, and 124; and Lunacy Rules, 1892, r. 124. As to registered land, see Land Transfer Act, 1875, s. 88. As to sales under the S. L. Acts on behalf of a lunatic, see S. L. Act, 1882, s. 62; *Re Gaitskell*, 40 Ch. D. 416. As to a lunatic not so found by inquisition (*Re Baggs*, [1894] 2 Ch. 416, n.), see now the Lunacy Act, 1908, s. 1; and see also Wolstenholme's Conveyancing, &c. Acts, 10th ed. p. 473.

S. L. Acts.

(*l*) Stamp, *ad valorem:* see *ante*, p. 307.

(*m*) If the lunatic is not so found by inquisition, say, "a person of unsound mind not so found by inquisition acting by [*committee*], of, &c., the person appointed to exercise the powers of a committee of his estate."

(*n*) If the lunatic is not so found, instead of "as such committee," say, "as the person appointed to exercise such powers as aforesaid."

SALE OF LANDS OF A LUNATIC BY HIS COMMITTEE.

by Master in Lunacy.

Testatum.

Conveyance.

in Lunacy, has settled and approved of these presents as a proper conveyance pursuant to the said order of the —— day of —— of the said hereditaments, as appears by the seal of the said Master affixed in the margin hereof. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said order of the —— day of ——, and for effectuating the said sale, the said [*lunatic*], acting by the committee, hereby, as beneficial owner, grants, and the committee hereby, as committee of the estate of the said [*lunatic*], grants (*o*) and confirms unto the purchaser, ALL THAT [*describe parcels*]. TO HOLD all the premises unto and to the use of the purchaser, his heirs and assigns.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c. (*oo*).

XXXVIII. CONVEYANCE *on* SALE *of* FREEHOLDS *by a* COMPANY *in* VOLUNTARY LIQUIDATION.

THIS INDENTURE (*p*), made the —— day of ——, 19—, BETWEEN the —— Company, Limited (hereinafter called "the company"), of the first part: [*liquidator*], of, &c., and [*liquidator*], of, &c., liquidators of the company (hereinafter called "the liquidators"), of the second part: and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS the company are possessed of or entitled to the hereditaments hereby assured in fee simple, free from incumbrances: AND WHEREAS, by special resolutions of the company, duly passed and confirmed at extraordinary general meetings of the members thereof, held on the —— day of ——, 19—, and the

Recitals of title of company;

of resolutions with a view to reconstruction;

(*o*) For the covenant on the part of the committee thus implied, see Conveyancing Act, 1881, s. 7 (1) (F). If the lunatic is not so found, say, "and the said committee under the said order hereby grants," which implies the same covenant. The Court has jurisdiction to authorise the implied covenants for title on the part of the lunatic: see *Re Ray*, [1896] 1 Ch. 468. If any muniments of title are retained by the committee, the acknowledgment will be given in the name of the lunatic.

(*oo*) For form of attestation, see *ante*, p. 135. The signature will be—"[*lunatic*], by [*committee*], as committee of his estate" [*or*, "as the person appointed to exercise the powers of a committee of his estate"].

(*p*) Stamp, *ad valorem*: see *ante*, p. 307. As to the power of liquidators to sell in a winding-up by the Court, see the Companies C. Act, 1908, s. 151 (2) (a), (b): and as to liquidators in a voluntary winding-up having the like powers, see same Act, s. 186 (iv).

—— day of ——, 19—, respectively, it was in effect resolved (*inter alia*) that the company be wound up voluntarily, and that the said liquidators be and they were thereby appointed liquidators for the purpose of such winding-up: AND WHEREAS the liquidators in the name and on behalf of the company have agreed with the purchaser for the sale to him of the said hereditaments in fee simple in possession, free from incumbrances, for the sale of £——. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the liquidators (the receipt whereof the liquidators and the company do hereby acknowledge), the company (acting by the liquidators) hereby grant, and the liquidators hereby confirm, unto the purchaser, ALL THOSE, &c. [*describe parcels*], TO HOLD the same unto and to the use of the purchaser, his heirs and assigns: AND each of them the liquidators, so far as relates to his own acts and deeds, hereby covenants with the purchaser that they the liquidators respectively have not done, omitted, or knowingly suffered or been party or privy to anything whereby the premises hereby conveyed, or any part thereof, are, is, or may be incumbered or affected, or whereby the company, acting by them the liquidators, are prevented from granting the same premises, or any part thereof respectively, in manner aforesaid.

XXXVIII. BY A COMPANY IN VOLUNTARY LIQUIDATION.

of agreement for sale.

Testatum.

Conveyance.

Covenants by liquidators against incumbrances.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS whereof the common seal of the company has been affixed by the direction of the liquidators and the other parties hereto have set their respective hands and seals the day and year first above written.

XXXIX. CONVEYANCE *of* FREEHOLDS *to a* RAILWAY COMPANY *by a* VENDOR SEISED *in* FEE SIMPLE, *pursuant to* AGREEMENT (*q*).

THIS INDENTURE (*r*), made the —— day of ——, 19—, BETWEEN *vendor*, of, &c. (hereinafter called "the vendor"),

Parties.

(*q*) See sects. 6 to 15 of the Lands Clauses Consolidation Act, 1845. Sect. 7 provides for purchase by agreement from limited owners; but where the sale is by a tenant for life, recourse should be had to the provisions of the Settled Land Acts. As to sales to railway companies, see "Contracts for Sale," Precedent VII., *ante*, pp. 296 *et seq.*

Purchase of lands by agreement.

(*r*) Stamp, *ad valorem* (see *ante*, p. 307), on the full amount of the consideration, including compensation for loss of trade: see *Commrs. of I. R.* v. *Glasgow, &c. Railway Co.*, 12 App. Cas. 315.

XXXIX. OF FREEHOLDS TO RAILWAY COMPANY BY OWNER IN FEE FOR A GROSS SUM.

of the one part, and the —— Railway Company (hereinafter called "the company"), incorporated by the —— Railway Act, 18— (hereinafter called "the Special Act"), of the other part: WHEREAS the vendor is seised of or entitled to the pieces of land and hereditaments hereinafter described and hereby conveyed in fee simple in possession, free from incumbrances: AND WHEREAS the said pieces of land and hereditaments are required by the company for the purposes of their railway and undertaking, and the company are authorised by the Special Act and by the Lands Clauses Consolidation Act, 1845, and other Acts incorporated with the Special Act, or some of them, to take for the purpose of their railway and undertaking the said lands and hereditaments: AND WHEREAS the company have accordingly agreed with the vendor for the purchase of the said lands and hereditaments at the price of £—— (*s*), and it has been agreed that such sum shall include [the value of all mines and minerals thereunder, and also] compensation for all damage caused by severing the aforesaid pieces of land and hereditaments from any other property of the vendor, or by otherwise injuriously affecting such other property in the exercise of the powers of the said Acts, or any of them (*t*), and shall also be in full satisfaction for all communications, works, and things which might otherwise be required to be made or done under any of the said Acts for the enjoyment, protection, or accommodation of any adjoining property of the vendor (*u*). NOW THIS INDEN-

Recitals:
of title of vendor;
of the power of company to take lands;
of agreement for purchase.

Testatum.

(*s*) If the sale is in consideration of a rentcharge (under sects. 10, 11 of the L. C. C. Act, 1845, see *Eyton* v. *Denbigh, &c. Rly. Co.*, L. R. 7 Eq. 439; and *Re Lord Gerard* v. *Beecham*, [1894] 3 Ch. 295), say,

"In consideration of a yearly rentcharge of £ ——, payable half-yearly as hereinafter mentioned, and which consideration has been determined by two able practical surveyors in pursuance of the statutory provisions in that behalf, such consideration to include, &c."

The stamp on a conveyance in consideration of a rentcharge is *ad valorem* on the capitalised value of the rentcharge: see Stamp Act, 1891, s. 56 (2).

(*t*) See L. C. C. Act, 1845, s. 63; Railways C. C. Act, 1845, ss. 6, 16. As to the principles on which compensation will be awarded, see *Caledonian Rail. Co.* v. *Walker's Trustees*, 7 App. Cas. 259; *Fleming* v. *Newport Rail. Co.*, 8 App. Cas. 265; *Rex* v. *Mountford*, [1906] 2 K. B. 814.

(*u*) In the case of a sale by a limited owner, under sects. 7, 9 of the L. C. C. Act, 1845, the purchase-money will be paid into Court, and a

XXXIX. OF FREEHOLDS TO RAILWAY COMPANY BY OWNER IN FEE FOR A GROSS SUM.

Conveyance.

TURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the said sum of £—— (*x*) paid by the company to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the company (*y*), ALL THOSE pieces or parcels of land and hereditaments situate in the parishes of —— and ——, in the county of ——, and containing by admeasurement —— acres, —— roods, and - perches, or thereabouts, which were late in the occupation of [A. B.], as tenant thereof, but are now in the possession of the company, all which same premises are delineated in the plan drawn in the margin of these presents, and are in the same plan, and also in the plans and books of reference of the said railway for the parishes of —— and —— aforesaid respectively, distinguished by the numbers —— respectively; except and reserving out of the grant hereby made [*or*, "together with"] all mines and

recital that this has been done should be added. If, however, the sale is made under the powers of the Settled Land Acts, the purchase-money will be paid according to the provisions of those Acts.

(*x*) If the consideration is a rentcharge, say,

"in consideration of the rentcharge hereinafter limited and of the covenants by the company hereinafter contained, and in exercise of all statutory or other provisions in that behalf, the vendor hereby, as beneficial owner, grants, &c."

and the habendum will be,

"unto the company and their assigns for ever, they the company, or their assigns" [*in the case of a limited owner, say*, "the vendor or his assigns or other the person or persons who but for these presents would hereafter, for the time being, be entitled to the rents and profits of the hereditaments hereby assured"] "a clear yearly rentcharge of £——, payable half-yearly on the —— day of —— and the —— day of ——, free from all taxes and deductions (except property tax), the first half-yearly payment to be made on the —— day of —— next, and the said rentcharge to be a first charge on the tolls and rates authorised by and payable under the Special Acts of the company."

(*y*) Words of limitation are not required in grants to corporations aggregate: Coke, Litt. 9b; *ibid.* 94b. In a grant to a corporation sole the word "successors" must be used (Coke, Litt. 94b), not "in fee simple," which would pass the fee to the individual instead of the corporation.

XXXIX. OF FREEHOLDS TO RAILWAY COMPANY BY OWNER IN FEE FOR A GROSS SUM.

minerals under the same premises (*z*), To HOLD the said pieces of land and hereditaments, and all and singular other the premises hereby assured, unto the company and their assigns (*a*); AND the vendor hereby acknowledges the right of the company to the production and delivery of copies of the several deeds and documents specified in the schedule hereto (possession of which it has been agreed shall be retained by the vendor), and hereby undertakes for the safe custody thereof.

Acknowledgment and undertaking as to deeds.

[*Add statement as to value,* ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XL. CONVEYANCE *of* COPYHOLDS *to a* RAILWAY COMPANY *to accompany a* CONVEYANCE *of* FREEHOLDS *of* EVEN DATE (*b*).

Conveyance.

KNOW ALL MEN BY THESE PRESENTS, that I [*the vendor*], of, &c., in consideration of the sum of £—— paid to me by the —— Railway Company (which sum of £—— is for the purpose

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Mines and minerals.

(*z*) By sect. 77 of the Railways Clauses Consolidation Act, 1845, a railway company is not entitled to any mines or minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, except as aforesaid, are to be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby. As to what are "minerals," see "Contracts for Sale," *ante,* p. 297, note (*r*).

(*a*) If the consideration is a rentcharge add a covenant by the company,

"And in consideration of the premises, the company hereby covenants with the vendor, his heirs and assigns, that the company will at all times hereafter duly pay the said rentcharge to the person or persons at the times and in the manner to, at, and in which the same is hereinbefore made payable without deduction except as aforesaid."

(*b*) This deed will bear the *ad valorem* stamp on the apportioned price of the copyholds. As to the rate at which duty will be payable, see *ante,* p. 307; should the consideration for the whole transaction not exceed 500*l.*, a statement as to value should be added: see *ante,* p. 317.

XL. OF COPYHOLDS TO A RAILWAY COMPANY.

of these presents and the *ad valorem* duty payable thereon, the apportioned or estimated price of the copyhold hereditaments hereby conveyed as appears more fully by an indenture of even date herewith and made, &c., whereby certain freehold hereditaments therein mentioned were conveyed by me to the said company), do hereby in exercise of the powers in this behalf given to me by the —— Railway Act, 18—, and the Public Acts incorporated therewith, as beneficial owner, convey to the said company [*describe parcels*]: To HOLD the premises unto the said company, and their assigns, for ever according to the true intent and meaning of the said —— Railway Act, 18—: NEVERTHELESS, until the said pieces or parcels of land and other hereditaments which are parcel and holden by copy of court roll of the manor of ——, in the county of ——, shall have been enfranchised by virtue of the powers contained in the Lands Clauses Consolidation Act, 1845, subject to the same fines, rents, heriots, and services as have heretofore been payable, and of right accustomed in respect of the same premises (*c*).

Habendum.

Subject to fines, &c.

IN WITNESS, &c.

(*c*) Sects. 95—98 of the Lands Clauses Consolidation Act, 1845, contain provisions as to the conveyance of copyholds. This conveyance must be entered on the rolls of the manor, and the steward on payment to him of the customary fees must enrol the same; the conveyance when so enrolled is to have the like effect in respect of the copyholds or customary lands as if the same had been freeholds, except that until enfranchisement they are to continue subject to fines, &c.: see sect. 95 of the Lands Clauses Act, 1845; and see also *Lord Leconfield* v. *L. & N. W. Rly. Co.*, [1907] 1 Ch. 38. Having regard to the necessity of enrolment, it is expedient that copyholds should be conveyed by a separate instrument, and that all necessary or advisable recitals should be contained in the conveyance of the freeholds. By sect. 96 of the same Act it is enacted that within three months after enrolment of the conveyance, or within one month after entry on the land, whichever shall first happen, the company are to procure the enfranchisement of the land; and by sect. 97 the lord of the manor is to enfranchise the same on payment of compensation as agreed upon or ascertained by valuation; and in case of the lord's default, or if he fails to deduce a good title, the company may enfranchise the land, by depositing the compensation-money in the prescribed manner, and executing a deed poll duly stamped in the manner provided in the case of the purchase of lands. See, as to compensation, *Duke of Northumberland* v. *Tynemouth Corporation*, [1909] 2 K. B. 374.

Enrolment of conveyance.

Enfranchisement.

XLI. OF FREEHOLDS TO A SCHOOL BOARD.

XLI. CONVEYANCE *of* FREEHOLDS *to a* LOCAL EDUCATION AUTHORITY, *under the Lands Clauses Consolidation Act*, 1845, *where the* OWNER DEMANDS *that the* AUTHORITY *shall* TAKE *the* WHOLE *of a* PIECE *of* LAND, PART *only of which is* REQUIRED *for the* PURPOSE *of the* AUTHORITY (*d*).

Parties.

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and The Council of the County [Borough] [Urban District] of —— [*or*, The Mayor, Aldermen, and Burgesses of —— by their Council] (*dd*), acting as the Local Education Authority (hereinafter called "the council"), of the other part:

Recitals: of vendor's seisin:

WHEREAS the vendor is seised of or entitled to the messuage or dwelling-house, with the gardens thereto and hereditaments hereby assured in fee simple in possession, free from incumbrances:

of requisition to take strip of land:

AND WHEREAS the strip of land delineated on the plan drawn in the margin of these presents, and therein coloured ——, being part of the said hereditaments, together with a portion of the said messuage or dwelling-house erected thereon, is required by the Council for the purposes of providing sufficient public school accommodation for their district in accordance with the provisions of the Education Acts, 1870 to 1909, and the general Acts incorporated therewith, and the council are authorised by the said Acts to take the said strip of land for the purposes aforesaid, and have accordingly requested the vendor to sell and convey the same to them:

of requisition by vendor for purchase of entirety of house and land (*f*).

AND WHEREAS the vendor refused to sell to the council the said strip of land, unless the Council would purchase and take the entirety of the said messuage or dwelling-house, garden, and

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Powers of local education authority for compulsory purchase of sites for schools.

(*d*) The powers conferred on a school board by the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), which, by sect. 20, incorporated the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, are by the Education Act, 1902, transferred to the local education authority, to whom further powers are given by the Education (Administrative Provisions) Acts, 1907 and 1909. See, as to London, Education (London) Act, 1903.

(*dd*) See *Leeds Institute of Science, &c. and Leeds City Council*, [1909] 1 Ch. 500.

(*e*) Stamp, *ad valorem*: see *ante*, p. 307.

(*f*) By sect. 92 of the Lands Clauses Consolidation Act, 1845, "no party shall at any time be required to sell or convey to the promoters of

hereditaments: AND the council have accordingly agreed with the vendor for the absolute purchase of the entirety of the said messuage or dwelling-house, garden, and hereditaments in fee simple, free from incumbrances, at the price of £——: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the vendor by the council (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the council ALL THAT [*describe parcels, house, and garden*]: TO HOLD the same unto the council and their assigns for the purposes aforesaid.

Testatum. Conveyance.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

XLII. CONVEYANCE *of* FREEHOLDS *to a* DISTRICT COUNCIL *under the Public Health Act*, 1875 (*g*).

THIS INDENTURE (*h*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and the Urban District Council of —— (hereinafter called "the council"), of the other part: WHEREAS under the —— order, 19—, confirmed by the Local Government Board's Provisional Orders Confirmation (No. —) Act, 19—, the council is empowered to acquire land under the Public Health Act, 1875, for the purposes of, &c. [*state the purposes for which the land is acquired*]: AND WHEREAS the vendor is seised of the hereditaments assured for an estate in fee simple in possession, free from incumbrances: AND WHEREAS the council, in exercise of their powers, have agreed with the vendor to purchase the said here-

Parties.

Recitals:

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the undertaking a part only of any house or other building or manufactory if such party be willing and able to sell and convey the whole." See, too, *Brook* v. *Manchester, &c. Rail. Co.*, [1895] 2 Ch. 571. The expression "house" has been held to extend to a "garden" or "paddock" or other land held with and necessary for the enjoyment of a house: see *King* v. *Wycombe Rail. Co.*, 28 Beav. 104; *Barnes* v. *Southsea Rail. Co.*, 27 Ch. D. 536; Byth. & Jarm. 4th ed. vol. v. p. 88.

(*g*) See sects. 173—181 of the Public Health Act, 1875. This conveyance, duly stamped, must be produced to the Commissioners of Inland Revenue, with a copy of the Act: see Finance Act, 1895, s. 12; Alpe, 12th ed. 134.

(*h*) The stamp will be *ad valorem:* see *ante*, p. 307.

XLII. OF FREEHOLDS TO A DISTRICT COUNCIL.

ditaments for an estate in fee simple in possession, free from incumbrances, for the sum of £——: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the council (the receipt whereof is hereby acknowledged), he, the vendor, hereby, as beneficial owner, grants unto the council ALL, &c. [*parcels*]: TO HOLD the same unto the council, and their assigns, for the purposes authorised by the said order.

[*Add statement as to value,* ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

XLIII. CONVEYANCE *of* FREEHOLDS *by* MORTGAGEE *and* TRUSTEE *in* BANKRUPTCY *of* MORTGAGOR, *to a* PURCHASER.

Parties.

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the first part; [*trustee in bankruptcy*], of, &c. (hereinafter called "the trustee"), of the second part: and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part;

Recitals: of mortgage;

WHEREAS by an indenture, dated the —— day of ——, 19—, and made between [*mortgagor*], of the one part, and the mortgagee, of the other part, in consideration of the sum of 30,000*l.* then paid by the mortgagee to the said [*mortgagor*], the hereditaments hereinafter described were conveyed by the said [*mortgagor*] to the use of the mortgagee, his heirs and assigns, subject to a proviso for the redemption of the said hereditaments, upon payment to the mortgagee of the sum of 30,000*l.* with interest for the same at the rate and on the day therein mentioned:

of proceedings in bankruptcy;

AND WHEREAS by an order, dated the —— day of ——, of the High Court of Justice in Bankruptcy [*or*, "of the County Court of ——, holden at —— in Bankruptcy"], the said [*mortgagor*] was adjudicated bankrupt, and the trustee was duly appointed trustee of the estate and effects of the said [*mortgagor*], and on the —— day of —— the said appointment was duly certified by the Board of Trade:

of appointment of trustee;

of contract (*k*).

AND WHEREAS the trustee, as such trustee as aforesaid, has agreed with the purchaser for the sale to him of the heredita-

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(*i*) Stamp, *ad valorem:* see *ante,* p. 307.

Powers, &c. of trustees.

(*k*) As to the appointment and powers of a trustee in bankruptcy, see Bankruptcy Act, 1914, ss. 19, 48—69, 76—95. The title of the trustee dates back to the time of the act of bankruptcy: sect. 37 of the 1914

ments hereby assured, and the inheritance thereof in fee simple in possession, free from incumbrances, at the price of 50,000*l.*: AND WHEREAS there is now owing to the mortgagee on the security of the said indenture of mortgage the principal sum of 30,000*l.* only, all interest thereon having been paid up to the date of these presents, and it has been agreed that the said sum of 30,000*l.* shall be paid out of the purchase-money: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of 50,000*l.* this day paid by the purchaser to the persons, and in the sums and manner hereinafter mentioned, that is to say, 30,000*l.* part thereof to the mortgagee, at the request of the trustee (the receipt whereof the said mortgagee hereby acknowledges); and 20,000*l.* the residue thereof to the trustee (the payment and receipt respectively as aforesaid of which said sums of 30,000*l.* and 20,000*l.* the trustee hereby acknowledges), the mortgagee, as mortgagee, at the request of the trustee, grants and releases, and the trustee, as trustee, hereby grants and confirms unto the purchaser, ALL THAT [*parcels*]: TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, freed and discharged from all moneys intended to be secured by and from all claims and demands under the hereinbefore recited indenture of mortgage.

Conveyance.

Habendum.

Discharged from mortgages.

[*Add statement as to value,* ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

Act. As to what property vests in the trustee, see sects. 38, 53 of the same Act. Until appointment of the trustee the property vests in the official receiver as trustee (sect. 53 of the same Act), who is also to act as trustee during any vacancy in the office of trustee (sect. 78 (4)): see *Turquand* v. *Board of Trade,* 11 App. Cas. 286. As to registered land, see Land Transfer Act, 1875, s. 43; L. T. Act, 1897, First Schedule; and L. T. R. 193—200; and L. T. Act, 1897, s. 9 (6). Dealings by the bankrupt with property, both real and personal, acquired after adjudication *bonâ fide* and for value, and completed before intervention by the trustee, are valid as against the trustee: see sect. 47 of the Bankruptcy Act, 1914; adopting the rule laid down in *Cohen* v. *Mitchell,* 25 Q. B. D. at p. 267, which rule, however, applied only to personal estate, including leaseholds: see *Official Receiver* v. *Cooke,* [1906] 2 Ch. 661. Neither the trustee nor any member of the committee of inspection can purchase any part of the bankrupt's estate: Bankruptcy Rules, 1886, r. 316; *Re Gallard,* [1897] 2 Q. B. 8. Bankruptcy Rules in force at the commencement of the Act of 1914 are to continue in force until revoked or altered: see sect. 168 of B. Act, 1914.

Registered land.

After-acquired property of bankrupt.

Purchase by trustee.

XLIV. OF MINES APART FROM SURFACE.

XLIV. CONVEYANCE *of* MINES, *with* GRANT *of* POWERS *of* WORKING, *subject to* LIABILITY *to make* COMPENSATION *for* INJURY *to* SURFACE (*m*).

Parties.

THIS INDENTURE (*n*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*recite title of vendor*];

Recitals: of agreement for sale of mines.

AND WHEREAS the vendor has agreed with the purchaser for the sale to him of the mines and hereditaments hereby conveyed and the inheritance thereof in fee simple, together with such powers for the winning and carrying away thereof as are hereinafter contained, for the sum of £——.

Testatum.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser,

Conveyance. Parcels.

ALL THOSE the mines, veins, and seams of coal and ironstone, and all other mines and minerals whatever, situate and lying in or under the several parcels or closes of land and hereditaments, containing in the whole —— acres or thereabouts, more particularly described, with the abuttals and acreage thereof, in the first schedule hereto, TOGETHER with full and free liberty for the purchaser, his heirs and assigns, and his or their lessees, agents,

Powers to get minerals by underground workings.

and workmen, and all other persons by his or their or any of their authority or permission at any time and from time to time, but by outstroke and underground workings only, and without entering upon the surface of the said parcels or closes of land and hereditaments, or any of them, to search for, get, work, take

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(*m*) As to transfer of minerals without the land where the land is registered, see L. T. R. 135. As to sale of minerals under the S. L. Acts, see sect. 17 of S. L. A. 1882; and see also sects. 2 (10) (iv), 4 (6); S. L. Act, 1890, s. 5; and as to sale of minerals with the sanction of the Court by a trustee or other person having a power of sale over the land, see Trustee Act, 1893, s. 44, amended by T. A. (1893) Amendment Act, 1894, s. 3; and as to the sale of minerals by mortgagees, see Conveyancing Act, 1911, s. 4 (ii), extending the power of sale under sect. 19 of C. A. 1881, s. 19. As to what are "minerals," see *ante*, p. 297, note (*r*).

(*n*) Stamp, *ad valorem:* see *ante*, p. 307.

XLIV. OF MINES APART FROM SURFACE.

away, and dispose of the said mines and minerals hereby conveyed, and to do all things necessary or expedient for the purposes aforesaid or any of them, BUT SUBJECT to the liability of the purchaser, his heirs and assigns, to make compensation to the vendor, his heirs and assigns, lessees, and tenants, the owners or occupiers for the time being of the surface of the said parcels or closes of land and hereditaments described in the first schedule hereto for all and any damage or injury to the same surface which shall or may be caused or occasioned by or by reason of the exercise of the liberties, powers, and authorities hereinbefore mentioned, or any of them, TO HOLD the said mines and minerals, and all other the premises hereby conveyed, subject as aforesaid, unto and to the use of the purchaser, his heirs and assigns. AND the vendor hereby acknowledges the right of the purchaser to the production and delivery of copies of the deeds and muniments of title specified in the second schedule hereto, which are retained by the vendor, and hereby undertakes for the safe custody thereof (*o*).

Subject to compensation.

Habendum.

Acknowledgment, &c., as to muniments of title.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Description of closes of land under which the mines conveyed are situate.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Muniments of title.*)

(*o*) Presumably the purchase-money will be over 500*l.*, in which case the statement as to value will not be required: see *ante*, p. 317.

XLV. OF FREEHOLDS WITH RESERVATION OF MINES.

XLV. CONVEYANCE *of* LAND *to a* PURCHASER *with* EXCEPTION *of the* MINES, *&c., and* RESERVATION *of* POWERS *for the* VENDOR *to* WORK, *&c. the same,* WITHOUT *being* LIABLE *to make* COMPENSATION *for* DAMAGE *to the* SURFACE *of the* LANDS SOLD (*p*).

Parties.

Testatum.

Conveyance.

Exception of mines and minerals,

and liberty for vendor to work the same,

THIS INDENTURE (*q*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part, WITNESSETH that, in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THOSE, &c. [*describe parcels*], EXCEPTING out of this conveyance, and always reserving unto the vendor, his heirs and assigns, all mines, veins, and seams of coal, cannel, and ironstone, and all other mines and minerals lying and being within or under the said lands and hereditaments hereby conveyed, TOGETHER with full and free liberty for the vendor, his heirs and assigns, and his and their lessees, agents, and workmen, and all other persons by his or their authority or permission, whether already given or hereafter to be given at any time and from time to time, but by underground workings only, and without entering upon the surface of the said lands and hereditaments hereby conveyed, or any of them, to search for, get, work, take away, and dispose of the said excepted premises, and also all or any other mines or minerals lying and being within or under any adjoining and neighbouring lands, and with or without leaving any support to the surface of the said lands and hereditaments hereby conveyed,

(*p*) As to transfer of registered land without the minerals, see L. T. R. 134. As to settled land, see S. L. Act, 1882, s. 17. As to sale by trustees having a power of sale with the sanction of the Court, see T. A. 1893, s. 44; and T. A. (1893) Amendment Act, 1894, s. 3; and as to mortgagees, see C. A. 1911, s. 4 (ii). As to the effect of a reservation of mines, &c., see *Batten Pooll* v. *Kennedy,* [1907] 1 Ch. 256; and as to what are "minerals," see *ante,* p. 297, note (*r*). As to the reservation of a freehold interest to commence *in futuro,* see *Savill* v. *Bethell,* [1902] 2 Ch. 523; *Sharpe* v. *Durant,* 55 Sol. J. 423; *S. E. Rly. Co.* v. *Associated Portland Cement Co.,* [1910] 1 Ch. 12.

(*q*) Stamp, *ad valorem:* see *ante,* p. 307.

XLV. OF FREEHOLDS WITH RESERVATION OF MINES.

and whether such surface shall or shall not, by any subsidence thereof or otherwise, be depressed, lowered, damaged, or destroyed, and to make, maintain, and use any watercourses, ways, and other works under any part of the said lands and hereditaments hereby conveyed as he the vendor, his heirs or assigns, or other the persons availing themselves of these present powers shall think proper; he the vendor, his heirs and assigns, and such other persons as aforesaid [not being in any manner liable or responsible (*r*)] for any depression, subsidence, damage, or injury whatsoever which shall or may be caused or occasioned to the surface of the said lands and hereditaments hereby conveyed, or any part thereof, or to any erection, building, engine, machinery, matter, or thing now being or hereafter to be in or upon the said lands and hereditaments hereby conveyed by the working or getting and carrying away, or by the having worked or got and carried away whether by the vendor, his heirs and assigns, or any such other person as aforesaid, of the said excepted premises, or such other mines and minerals as aforesaid, To HOLD all the same premises except as aforesaid, and subject to the exercise of all or any of the liberties and powers hereinbefore reserved unto and to the use of the purchaser, his heirs and assigns.

without being liable for damage to surface.

Habendum.

[*Acknowledgment as to muniments of title*, ante, *p.* 399.]

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

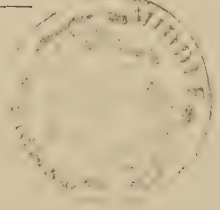
THE SCHEDULE ABOVE REFERRED TO.

(*Muniments of title.*)

(*r*) If so intended, instead of the words in brackets the following may be inserted:—

"making from time to time due compensation to the purchaser, his heirs and assigns, and his and their tenants."

Making due compensation for damage.



XLVI. GRANT OF RIGHT OF WAY.

XLVI. GRANT *of a* RIGHT OF WAY *through a certain* ROAD *with* HORSES, CARRIAGES, *&c.* (*s*).

THIS INDENTURE (*t*), made the —— day of ——, 19—, BETWEEN [*grantor*], of, &c. (hereinafter called "the vendor"),

Parties.

Definition of easement.

(*s*) "An easement is a privilege, without profit, which the owner of one tenement has a right to enjoy in respect of that tenement in or over the tenement of another person, by reason whereof the latter is obliged to suffer, or refrain from doing something on his own tenement for the advantage of the former": Goddard on the Law of Easements, 7th ed. p. 2. An easement is an incorporeal hereditament and does not confer any estate or interest in the land to which it relates: thus a grant of a right of way does not pass the soil of the road: *Clifford* v. *Hoare,* L. R. 9 C. P. 362: and accordingly the grantee cannot prevent the landowner from granting to a third person a similar easement over the same land. As to the distinction between an *easement* and *profit à prendre,* and generally as to easements, see Goddard on Easements, 7th ed.; and Gale on Easements, 8th ed. An easement necessarily implies the existence of a dominant tenement to which the right is attached, and a servient tenement which is subject to the obligation: see *Rangeley* v. *Midland Rail. Co.*, L. R. 3 Ch. at p. 310. Strictly speaking, therefore, all easements are appurtenant, and there can be no such thing as an easement in gross. A right of way or any similar right which is not appurtenant to any tenement is only a personal right, and is not capable of assignment: *Ackroyd* v. *Smith,* 10 C. B. 164; *Thorpe* v. *Brumfitt,* L. R. 8 Ch. 650. It is essential to the existence of an easement that the dominant and servient tenements should belong to different owners; if the seisin of both tenements in fee simple becomes vested in the same owner, the easement will merge in the dominant tenement, and so be extinguished: *Holmes* v. *Goring,* 2 Bing. 83; *James* v. *Plant,* 4 A. & E. 749. An easement does not impose any active duty on the owner of the servient tenement; his obligation is merely to suffer the user of the land in accordance with the nature of the easement, and to refrain from doing anything which will obstruct or prejudice the enjoyment thereof by the owner of the dominant tenement: *Jones* v. *Pritchard,* [1908] 1 Ch. 630, at 637. Easements may arise under or by virtue of an express or implied grant, or by devise, or under some statutory enactment, or by prescription, or by custom. In the eye of the law, however, it would seem that all easements are regarded as arising by virtue of an express or implied grant. "Every easement has its origin in a grant, express or implied; the person who can make that grant must be the owner of the land": *per* Cairns, L.J., in *Rangeley* v. *Midland Rail. Co.*, L. R. 3 Ch. at p. 310. Formerly, easements could not be created by way of uses, for the statute (27 Hen. 8,

Easements are incorporeal hereditaments.

Existence of distinct dominant and servient tenements essential to easement.

Extinction of easements by unity of seisin.

Easement imposes no active obligation on owner of servient tenement.

Creation of easements.

(*t*) The stamp will be *ad valorem:* see *ante,* p. 307.

Testatum.

Grant of right of way.

of the one part, and [*grantee*], of, &c. (hereinafter called "the purchaser"), of the other part, WITNESSETH that, in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser and his heirs, full and free right and liberty for the purchaser, his heirs and assigns, the owners and occupiers for the time being of the messuage and farm, situate in the parish of —— in the county of ——, and known as [X.] Farm: and his and their undertenants and servants from time to time, and at all times hereafter, at his and their will and pleasure, by night and by day, and for all purposes (*u*), with or without horses, carts, waggons, carriages, traction engines, motor cars and other vehicles, laden or unladen, to go, pass, and repass, and also to drive cattle and other beasts through, along, and over a certain road or way lately formed and fenced off by the said [*grantor*] out of, and from and intersecting certain closes or fields in the said parish of —— belonging

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c. 10) enables only the creation of *estates* in real property, and of rentcharges, and not the creation of any other interests: see *Beaudely* v. *Brook,* Cro. Jac. 189. But an easement, when once created, being a hereditament, could be conveyed to uses in the ordinary way. By sect. 62 of the Conveyancing Act, 1881, it is now provided that easements may be created *de novo,* as well as conveyed, when in actual existence, by means of the Statute of Uses. See, as to the effect of this section, Wolstenholme's C. A., 10th ed. p. 134. As to entry of notice on the register of a right of way against the servient tenement, see L. T. R. 215. If the registered proprietor has disposed of the legal estate by an instrument off the register (sect. 49 of L. T. A. 1875; *Capital and Counties Bank* v. *Rhodes,* [1903] 1 Ch. 631) he may not be able to grant a right of way.

Registered land.

(*u*) In granting or reserving rights of way care should be taken to describe with distinctness whether it is a foot-way, horse-way, carriage-way, or drift-way, which is intended: see *Bullard* v. *Dyson,* 1 Taun. 283. "*Primâ facie* the grant of a right of way is the grant of a right of way having regard to the nature of the road over which it is granted, and the purpose for which it is intended to be used": *per* Jessel, M.R., in *Cannon* v. *Villars,* 8 Ch. D. 415; see also *Serff* v. *Acton Local Board,* 31 Ch. D. 679; *Milner's Safe Co.* v. *G. N. & City Rail. Co.,* [1907] 1 Ch. 208. Care should also be taken to mention with precision the course and direction, the commencement and end, of the way, and, when possible, the way should be described by reference to a plan: see *Deacon* v. *S. E. Rail. Co.,* 61 L. T. 377.

Suggestions in granting rights of way.

XLVI. GRANT OF RIGHT OF WAY.

to the vendor in fee simple, which road or way is —— feet in width and —— yards in length, or thereabouts, and leads from the turnpike-road, or public highway, opposite or adjacent to the [X.] Farm aforesaid, to a certain road or lane communicating with the farm and lands of the purchaser, called the [Y.] Farm, and which same road or way the right and liberty of user whereof in manner aforesaid is hereby granted, and the course and direction thereof are delineated in the map or plan indorsed on these presents. AND also full and free right and liberty for the purchaser, his heirs and assigns, and all or any such persons or person as aforesaid, from time to time and at all times hereafter, with workmen, horses, carts, and other persons and things, to enter in and upon the said road or way, the right of user whereof is hereby granted, and to make and lay causeways or otherwise to repair and amend the same road or way as there shall be occasion; AND the purchaser covenants with the vendor, that he the purchaser, his heirs and assigns, will from time to time and at all times hereafter, at his and their own expense, repair and amend, and keep repaired and amended in a proper, substantial, and workmanlike manner, the said road or way, the right and liberty of user whereof is hereby granted, and also the gate erected by the vendor across the same road at the northern end or extremity thereof, and the lock and fastening belonging thereto, and will from time to time, and at all times hereafter, at the like expense of the purchaser, his heirs or assigns, repair and renew the quickset hedge and fence lately planted by the vendor on both sides of the said last-mentioned road or way; AND also that he the purchaser, his heirs and assigns, and his and their agents and servants, and the tenants and occupiers for the time being of the said messuage and farm called [Y.] using the said road or way, the user whereof is hereby granted, will, if and whenever and so long as the vendor, his heirs or assigns, the owner or owners for the time being of the said lands adjoining the same road shall so require, immediately after having used and passed through the said gate shut and lock the same, and keep the same securely locked when not in use.

Power to enter and repair (*v*).

Covenant by grantee to repair road, &c.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

(*v*) This express power does not seem to be strictly necessary, but its insertion is usual, and may be useful as obviating any question as to the grantee's rights.

XLVII. GRANT *of a* RIGHT *to* USE *a* SUBTERRANEAN WATERCOURSE *under the* LAND, *and also a* SURFACE STREAM *flowing through the* SAME (*w*).

XLVII. GRANT OF WATERCOURSE.

THIS INDENTURE (*x*), made the —— day of ——, 19—, BETWEEN [*grantor*], of, &c. (hereinafter called "the grantor"), of the one part, and [*grantee*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the purchaser has recently erected a cotton mill or manufactory on his lands at ——, in the county of ——: AND WHEREAS certain lands of the grantor, as shown on the plan drawn in the margin of these presents and therein coloured pink, are interposed between the land of the purchaser and a brook, called the ——, flowing through lands of the grantor in the parish of ——, in the county of —— aforesaid: AND WHEREAS the purchaser has, by the permission of the grantor, entered upon the said land coloured pink on the said plan of the grantor, and has constructed an underground culvert or tunnel therein for the purpose of conducting water from the said brook to his said mill, and also an open watercourse or channel for conducting the said water from the same mill back into the said brook in manner hereinafter appearing: AND WHEREAS the grantor has agreed with the purchaser to grant to him such easement or right of watercourse through, under, and along the said land of the grantor, as hereinafter appears, for the sum of £—: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the grantor by the purchaser (the receipt whereof is hereby acknowledged), the grantor hereby, as beneficial owner, grants unto the purchaser and his heirs the full and free right and liberty, at all times hereafter, of drawing and using the water from the said brook, called the ——, for working the said mill, and for all the purposes thereof, and also the full right to the free and uninterrupted flow of water from the point marked A in the said plan on the bank of the said brook, to the said mill through the said underground culvert or tunnel, so con-

Parties.

Recitals: erection of mill;

of construction of tunnel;

of agreement to grant easement.

Testatum.

Grant of easement.

(*w*) As to the nature of easements and the rights of the owners of the servient and dominant tenements respectively, see the notes to the last precedent; and as to entry of notice on the register where the land is registered, see *ibid.*

(*x*) Stamp, *ad valorem:* see *ante*, p. 307.

XLVII. GRANT OF WATER-COURSE.

structed in the said land as aforesaid (the course of such culvert or tunnel being delineated on the said plan, and therein coloured red), and also from the said mill to the point marked B in the said plan on the bank of the said brook, through and along the said open channel or watercourse (the course of such open watercourse or channel being delineated on the said plan, and therein coloured blue), and also the full and free right and liberty henceforth for ever to use the said underground channel or tunnel and open watercourse respectively, and to maintain the same in a proper state of repair and condition respectively: AND full and free liberty from time to time to inspect the state and condition of, and uphold, amend, repair, cleanse, and maintain the said underground tunnel and open watercourse respectively, and for the purposes aforesaid, or any of them, at all reasonable times with surveyors, workmen, horses, carts, waggons, and other persons and things to enter upon the said close or parcel of land, or any part thereof, and to bring and place upon the same such materials, implements, and things as may be necessary, and to open and dig up the surface of the same close or parcel of land: PROVIDED ALWAYS that the grantor, his heirs and assigns, shall not be in any way bound to retain the surface of the said close or parcel of land at its present level, or to refrain from erecting buildings over the said underground culvert or tunnel, except at the part of the course thereof from the point marked A to the point marked C, and from the point marked D to the point marked E on the said plan: PROVIDED ALWAYS, and the purchaser for himself and his assigns, hereby covenants with the grantor that he the purchaser, his heirs and assigns, will at all times hereafter well and sufficiently uphold, amend, cleanse, and maintain the said underground culvert or tunnel and open watercourse respectively, in substantial and proper repair and condition, and will execute all necessary works and operations for those purposes in a workmanlike manner, and so as not to cause a nuisance to the said land coloured pink on the said plan, or the owners, tenants, or occupiers for the time being thereof, and will remove and carry away all stones, gravel, clay, sand, soil, and rubbish which shall be from time to time taken out of the said underground culvert or tunnel and open watercourse respectively, and

Proviso that grantor may erect buildings (*y*).

Covenants by grantee to maintain the watercourses, and for indemnity.

(*y*) See, as to this, *Goodhart* v. *Hyett*, 25 Ch. D. 182.

will replace and restore and level the surface of the said close or parcel of land whenever and wherever disturbed by reason of any such works or operations as aforesaid, and will not unnecessarily damage or injure the surface or the crops for the time being thereon, and will at all times before entering upon the said land, or any part thereof, for the purpose of any such works or operations as aforesaid (except in the case of sudden obstruction of the flow of water or other extraordinary accident), give at least —— days' notice in writing of his intention so to do to the grantor, his heirs or assigns, and also to the tenant or occupier for the time being of the said close or parcel of land: And will at all times hereafter keep indemnified the grantor, his heirs and assigns, from and against all damage, injury, or nuisance which may be caused or occasioned by the said underground culvert or tunnel and open watercourse, or either of them, or by any such works or operations as aforesaid, to the said land coloured pink on the said plan, or to any buildings for the time being erected and being thereon, and also from and against all actions, proceedings, costs, expenses, claims, and demands for or in respect of any diminution or pollution of the flow of water by or by reason of the diversion thereof through the said underground culvert or tunnel and open watercourse respectively, or by or by reason of any work, operation, act, or default of the purchaser, his heirs or assigns, or otherwise in relation to the premises.

[*Add statement as to value*, ante, *p.* 317, *if appropriate*.]

In witness, &c.

XLVIII. CONVEYANCE *in* Fee *of* Land, *in* Consideration *of a* Perpetual Rentcharge. Covenant *to* Build, Repair, *and* Insure (*z*).

THIS INDENTURE (*a*), made the —— day of ——, Between [*vendor*], of, &c. (hereinafter called "the vendor"), Parties.

(*z*) Where lands are sold in consideration of a rent issuing out of them for the benefit of the vendor, it should always be stipulated by whom the expense of the conveyance is to be borne; for, as the vendor takes an interest under the limitations, it does not follow that the rule which throws this expense upon the purchaser in ordinary cases, would apply to this. As to costs, where lands are sold in consideration of a rentcharge.

(*a*) See note (*a*) next page.

XLVIII. IN FEE IN CONSIDERATION OF FEE FARM RENT.

of the one part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the vendor, being seised of the lands and hereditaments hereby assured in fee simple, free from incumbrances, has agreed with the purchaser for the sale to him of the same in fee simple, free from incumbrances, in consideration of the yearly rentcharge hereinafter limited, and of the covenants on the part of the purchaser hereinafter contained. NOW THIS INDENTURE WITNESSETH as follows:—

Recitals: of vendor's seisin; of contract for conveyance.

Testatum.

1. In pursuance of the said agreement, and in consideration of the yearly rentcharge of £——, hereinafter limited to the vendor, and of the covenants on the part of the purchaser hereinafter contained, the vendor hereby, as beneficial owner (*b*), grants unto the purchaser, ALL THAT, &c. [*parcels*]: TO HOLD all the premises unto the purchaser, and his heirs, to the use that the vendor, his heirs and assigns, may receive a perpetual yearly rentcharge of £——, to commence from the date of these presents, and to be charged upon, and issuing out of all the premises hereby granted, and to be paid, without any deduction, by equal quarterly payments upon the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the first of such pay-

Conveyance.

Habendum to uses limiting rentcharge, with remainder to purchaser in fee.

As to registration of the owner of a rentcharge as proprietor, see L. T. Act, 1875, s. 82; L. T. R. 71, 73; and L. T. R. 1907, sched. Such registration is not compulsory: L. T. Act, 1897, s. 24 (1); but the rent may be noted against the title to the land if registered: L. T. Act, 1875, s. 82. The registered proprietor of land may charge it with an annuity: L. T. Act, 1897, s. 9 (3); see L. T. R., Form 45, amended by L. T. R. 1907.

Stamp.

(*a*) The stamp will be *ad valorem* (see *ante*, p. 307) on the total amount of the rentcharge payable during twenty-one years: see sect. 56 (2) of the Stamp Act, 1891. Inasmuch as this deed creates a rentcharge in perpetuity and not for a life or lives, or for a term or estate determinable on a life or lives, it is not within sect. 12 of the stat. 18 & 19 Vict. c. 15, and does not require registration under that Act; nor is it affected by the Land Charges, &c. Act, 1888, as the charge is created by deed: see sect. 4, "Definition of Land Charge." As to capitalising the rentcharge for the purpose of increment value duty, see Finance (1909-10) Act, 1910, s. 32 (1).

Increment value duty.

(*b*) The vendor's covenants for title will be conditioned, by virtue of the statute, upon the fulfilment by the purchaser of the covenants on the purchaser's part contained in the conveyance, as the property is conveyed expressly subject to the rentcharge and to the performance of the covenants: see C. A. 1881, s. 7 (1) (A).

XLVIII. IN FEE IN CONSIDERATION OF FEE FARM RENT.

ments to be made on the —— day of —— next (*c*); And subject and so charged as aforesaid, to the use of the purchaser, his heirs and assigns.

Covenant by purchaser to pay rent;

2. The purchaser hereby covenants with the vendor that he the purchaser, his heirs and assigns, will henceforth pay to the vendor, his heirs or assigns, the said rentcharge of £——, at the times and in manner hereinbefore appointed in that behalf as the same shall become payable, without any deduction; And the purchaser, for himself and his assigns, further covenants with the vendor that he the purchaser, his heirs, executors, administrators, or assigns, will, within two years from the date of these presents, erect and build, on the premises hereby conveyed, with proper materials, and in a workmanlike manner, one good and substantial messuage or dwelling-house, with suitable offices, to be completed and finished within the period aforesaid; in which erection and building the purchaser, his heirs, executors, administrators, or assigns, will lay out and expend the sum of £—— at the least, and will, on the request of the vendor, his heirs or assigns, produce to him or them the vouchers or receipts for such expenditure, and at all times hereafter, at his and their own costs, well and sufficiently repair or replace and keep in good condition the said messuage or dwelling-house so to be erected and built, and will, at his and their own costs, insure and keep insured the same in some respectable office for insurance against fire to the amount of not less than £——, and will, from time to time, upon request produce to the vendor, his heirs or assigns, the policy of insurance for the time being in force, and the receipt for the last premium that shall have fallen due in respect thereof.

and to expend £—— in erecting a messuage.

(*c*) Here followed, before the Conveyancing Act, 1881, came into force, the powers of distress and entry, which may now be omitted in reliance on the provisions contained in sect. 44 of that Act. By sub-sect. (2), if the annual sum is in arrear for twenty-one days, the person entitled to receive it may distrain; and by sub-sect. (3), if the annual sum is in arrear for forty days, he may enter into possession, and hold the land charged, and take the annual income, until thereby or otherwise the annual sum with any arrears is paid. Sub-sect. (4) provides that the person entitled to the annual sum may limit a term in the land charged to a trustee for the purpose of securing payment. Sect. 6 of the C. Act, 1911, declares that the rule of law relating to perpetuities does not apply to powers conferred by sect. 44 of the C. A. 1881, or by any instrument for recovering any annual sum within the meaning of that section.

Powers of distress and entry. C. A. 1881, s. 44.

C. A. 1911, s. 6.

XLVIII. IN FEE IN CONSIDERATION OF FEE FARM RENT.

Proviso for re-entry, on non-performance of covenant to build (*d*).

3. PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the purchaser, his heirs or assigns, shall neglect or fail to perform any of the covenants and stipulations hereinbefore expressed, for the erection and building of a messuage or dwelling-house on the premises hereby conveyed, and for the repair and insurance thereof in manner aforesaid, and the production of the vouchers or receipts relating to the expenditure hereinbefore covenanted to be made therein, it shall be lawful for the vendor, his heirs and assigns, to enter into and upon the premises hereby conveyed, to execute and do all such works, operations, acts, and things as may be necessary for or in relation to the erection and building and maintenance and insurance of the said messuage or dwelling-house pursuant to the covenants and stipulations in that behalf hereinbefore contained, and to hold and enjoy the same premises and receive the rents and profits thereof, until all the said covenants and stipulations shall have been fully performed and satisfied, and until the purchaser, his heirs or assigns, shall have paid to the vendor, his heirs or assigns, all costs, charges, and expenses properly incurred by him or them in or about any such works, operations, acts, or things as aforesaid, or caused or occasioned by breach of any of the said covenants or stipulations, with interest thereon at the rate of five per cent. per annum from the dates at which the same shall respectively have been incurred until payment thereof, or until such costs, charges, expenses, and interest shall have been fully paid and satisfied out of the said rents and profits (*e*).

As to unlimited restrictive covenants.

(*d*) It may be doubted whether the principle of the decision in the case of the *London and South-Western Rail. Co.* v. *Gomm*, 20 Ch. D. 562 (as to unlimited restrictive covenants), would not apply to absolute powers of re-entry for breach of restrictive covenants of this nature, so as to render them void as creating a perpetuity. The power in the text has therefore been limited as expressed in the proviso at the end. Restrictive covenants for the erection and maintenance of buildings, &c., or the execution or performance of other works or acts, will not be enforced against the assigns of the covenantor even with notice.

(*e*) If it be the intention of the parties that the rentcharge shall be redeemable, the following provisions may be here added:—

Power for the purchaser to redeem the rentcharge.

"PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the purchaser, his heirs or assigns, shall at any time during the lives and life of the vendor and purchaser, and of the survivor

XLVIII. IN FEE IN CONSIDERATION OF FEE FARM RENT.

4. PROVIDED ALWAYS, and it is hereby agreed, that the powers of entry upon and holding and enjoying and receiving the rents and profits of the said premises conferred on the purchaser by these presents shall be exercisable only during the life of the survivor of the issue now living of Her late Majesty Queen Victoria and twenty-one years after the death of such survivor, and such further period (if any) as shall be lawful. Restriction of powers of entry, &c. to avoid perpetuity.

[*Acknowledgment and undertaking as to deeds and documents of title, if required*, ut ante, *p.* 399] (*f*).

XLIX. CONVEYANCE *of a* PLOT *of* LAND *on an* ESTATE LAID OUT *for* BUILDING—EXCEPTION *of* MINES *and* MINERALS—RESTRICTIVE COVENANTS *as to* MODE *of* BUILDING, *and as to* USER *of* LAND (*g*).

THIS INDENTURE (*h*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), Parties.

of them, or within twenty-one years after the death of such survivor, be desirous of purchasing or redeeming the said rentcharge, and of such his or their intention shall give unto the vendor, his heirs or assigns, six calendar months' notice in writing, to expire within the last mentioned period, then the vendor, his heirs or assigns, shall on the expiration of such notice, on receiving all sums of moneys which shall be due in respect of the said rentcharge up to the day of purchasing the same, accept and take the sum of £—— as the price and in full satisfaction or redemption of the said rentcharge; and on receipt of such sum of £——, and of all such sums of money as aforesaid, shall convey and release the said rentcharge unto the purchaser, his heirs and assigns, or as he or they shall direct."

The statutory power given by sect. 45 of the Conveyancing Act, 1881, for the redemption, by application to the Land Commissioners, of quit rents and other perpetual rentcharges does not apply to rentcharges reserved on sales of land: see sub-sect. (5).

(*f*) A counterpart of this deed is usually executed to be retained by the grantee of the rent.

(*g*) As to settled lands, see S. L. Act, 1882, s. 3 (6).

(*h*) Stamp, *ad valorem* on the purchase-money: see *ante*, p. 307; and a further stamp of 10*s*. in respect of the covenants.

XLIX. OF FREEHOLD PLOT OF LAND SUBJECT TO BUILDING COVENANTS.

Testatum. Conveyance.

Parcels.

Right of way.

Exception and reservation of mines, &c., and powers of working (*hh*).

Habendum.

of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part, WITNESSETH, that in consideration of the sum of £—— paid by the purchaser to the vendor, for the purchase of the unincumbered fee simple of the hereditaments hereby assured (the receipt whereof is hereby acknowledged), and also in consideration of the covenants on the part of the purchaser hereinafter contained, the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THAT plot or parcel of land forming part of the —— estate recently laid out by the vendor for sale in lots under a general scheme of development; AND which said plot or parcel of land is bounded on the —— side thereof by, &c. [*describing boundaries*], and contains by admeasurement —— superficial square yards or thereabouts, all which premises are delineated on the part of the plan of the said —— estate indorsed hereon, and therein numbered ——, and coloured red; TOGETHER with full and free liberty for the purchaser, his heirs and assigns, and his and their friends, visitors, agents, servants, and workmen, with or without horses, carriages carts or waggons, however propelled, to pass and repass over and along any of the roads upon the said —— estate, for the purpose of going to or returning from the said plot of land; EXCEPTING out of these presents, and always reserving unto the vendor, his heirs and assigns, all mines and minerals whatsoever, lying within or under the said plot of land hereby conveyed, with liberty for the vendor, his heirs and assigns, to dig for, work, get, and carry away the same by underground workings only, without breaking the surface of the plot of land and premises hereby conveyed, he and they leaving sufficient pillars to support the said surface and any buildings to be erected thereon: To HOLD all the premises hereby assured, subject to the exceptions and reservations aforesaid, and also subject to the restrictions and undertaking on the part of the purchaser, with regard to the mode of building and user of the premises and subject to the obligation to repair, or contribute to the cost of repairing, the roads and ways adjoining the premises, the performance whereof is intended to be further secured by the covenants on the part of the purchaser hereinafter contained, and intended to be for the protection and benefit of the vendor,

(*hh*) For a fuller form of exception of mines and minerals, see Precedent XLV., *ante*, p. 400, and note thereto.

XLIX. OF FREEHOLD PLOT OF LAND SUBJECT TO BUILDING COVENANTS.

his heirs and assigns, and the respective owners for the time being of the other parts of the said —— estate, unto and to the use of the purchaser, his heirs and assigns: PROVIDED ALWAYS, and the purchaser, for himself and his assigns, hereby covenants with the vendor in manner following, that is to say:—

Covenants by purchaser (*i*).

To fence in land.

1. To erect forthwith, and for ever thereafter maintain, a good and sufficient fence or partition of oak or wood, not less than ——, or more than —— feet in height, on the sides of the said plot of land abutting on any road as shown in the said plan, and also on the —— side thereof, so as to separate and effectually fence off the said plot of land as well from the adjoining plots of land in the said —— estate as from any such road as aforesaid.

To build a dwelling-house.

2. To erect and build upon the said plot of land, within —— calendar months from the date hereof, at his own cost, and under the inspection and to the satisfaction of the architect or surveyor for the time being of the vendor, in a good, substantial, and workmanlike manner, one messuage or dwelling-house, of the cost of £—— at the least [*add any stipulations as to the materials to be used, or other matters in connection with the building of the dwelling-house, that may be agreed upon*].

Fence and house to be in accordance with plan.

3. That the fencing to be erected as aforesaid between the said plot of land and any such road as aforesaid, and also the messuage to be erected thereon as aforesaid, shall be designed, erected, and completed in accordance with a uniform plan and elevation approved of by the vendor.

As to frontage.

4. To keep the front wall of such messuage or dwelling-house aligned and even with the building line marked upon the said plan, and to permit no portion of such messuage or dwelling-house to project beyond the said building line.

Not to build except as aforesaid.

5. Not to erect upon the said plot of land any building of any

(*i*) See *Elliston* v. *Reacher*, [1908] 2 Ch. 374 (affirmed *ibid.* 665), in which case Parker, J., lays down certain "points" which must be established in order to bring the principles of *Renals* v. *Cowlishaw*, 9 Ch. D. 125; 11 Ch. D. 866; and *Spicer* v. *Martin*, 14 App. Cas. 12, into operation and to make restrictive covenants enforceable by one purchaser against another; see also *Reid* v. *Bickerstaff*, [1909] 2 Ch. 305; *Long* v. *Gray*, 58 Sol. J. 46. As to the covenantor covenanting for "himself and his assigns," see K. & E., 10th ed. Vol. I. p. 757. See, generally, as to restrictive covenants and how they may be annexed to the land, K. & E., 10th ed. Vol. I. pp. 373 *et seq.*

XLIX. OF FREEHOLD PLOT OF LAND SUBJECT TO BUILDING COVENANTS.

nature, whether temporary or permanent, except such messuage or dwelling-house as aforesaid.

To use house as a private dwelling-house only.

6. To use such messuage or dwelling-house so to be erected upon the said plot of land, as and for a private dwelling-house only, and not for the purpose of any trade, business, or profession, of any kind whatsoever, or any purpose of the nature thereof or having the appearance thereof.

To repair and maintain roads.

7. To repair and maintain or pay the cost of repairing and maintaining one-half of so much of each of the roads or ways which adjoin the said plot of land as is co-extensive with the frontage thereof in such road or way, to the intent that the same may for ever hereafter be properly repaired, pitched, and paved, and kept in a proper state and condition.

Covenants by vendor.

And the vendor, for himself and his assigns (*ii*), hereby covenants with the purchaser in manner following, that is to say:—

To make roads.

1. That he will, before the —— day of ——, 19—, make and complete in a proper and workmanlike manner the roads and ways shown upon the said plan of the said —— estate, and thereon designated by the names of the —— Drive and the —— Road respectively (which roads are or will be more particularly convenient for the user and enjoyment of the said plot of land), and will lay down and finish, in manner aforesaid, gravel paths or sidewalks on both sides of the said roads or ways.

Not to permit trades, &c. to be carried on on other lots.

2. That he will not permit or suffer any trade, manufacture, or business or anything in the nature or having the appearance thereof to be exercised or carried on upon any plot of land on the said —— estate, or permit or suffer anything to be done or performed thereon which may be or grow to be a nuisance to the purchaser or his assigns; save and except that the vendor may permit one hotel, tavern, or other place for the sale of intoxicating liquors, and no more, to be erected upon any one, or more, if adjacent to one another, of the plots of land on the said —— estate, numbered ——, ——, and —— upon the plan of the said —— estate, a portion whereof is endorsed upon these presents.

Proviso as to variation of restrictions as to other lots.

Provided always, and it is hereby agreed and declared by and between the parties hereto, that it shall be lawful for the vendor, notwithstanding anything herein contained to the contrary, in the case of any purchaser of any other plot or plots of land upon the said —— estate, to vary or dispense with any or all of the

(*ii*) See last page, note (*i*).

XLIX. OF FREEHOLD PLOT OF LAND SUBJECT TO BUILDING COVENANTS.

restrictions and conditions herein contained (with the exception of those relating to the cost of repairing any road or roads on the said —— estate, or the covenant on the part of the vendor not to permit any building upon the said —— estate to be used as or for an hotel, tavern, beerhouse, or place for the sale of any intoxicating liquor, except upon the plots herein specified in that behalf), without thereby releasing the purchaser from any of the said restrictions and conditions on his part herein contained, or giving to the purchaser any right to bring any action against him the vendor or any purchaser of any plot of land in respect whereof any of the said restrictions and conditions may have been altered or dispensed with, on the ground of such alteration and dispensation: PROVIDED ALSO, and it is hereby agreed and declared, that [*Proviso for re-entry on breach of purchaser's covenants, ut ante*, p. 409, *with the proviso restricting such re-entry so to avoid perpetuity*]; AND the vendor acknowledges, &c. [*Acknowledgment and undertaking as to title deeds, ante*, p. 318].

Proviso for re-entry.

Acknowledgment as to title deeds.

[*Statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

[*Deeds and documents of title.*]

L. CONVEYANCE *of a* PLOT *of* LAND *by a* BUILDING SOCIETY SUBJECT *to* RESTRICTIVE COVENANTS, *the* COVENANTS BEING CONTAINED *in an* INDEPENDENT DEED EXECUTED *by the* PURCHASER.

THIS INDENTURE (*k*), made the —— day of ——, 19—, BETWEEN The —— Land Society, Limited, duly registered under the Industrial and Provident Societies Act, 1893, and hereinafter referred to as "the Society," of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the Society being the owner in fee simple of an estate known as the —— estate, situate at ——, near ——, in the county of ——, has laid out the same for building purposes, and has divided it (exclusive of the projected roads) into —— lots; AND WHEREAS the Society has agreed with the purchaser for the sale to him of the fee simple of the hereditaments hereby conveyed (being lot —) of the said estate; AND WHEREAS it was one

Parties.

Recitals: of ownership of society;

of agreement for sale;

of agreement as to deed of covenants.

(*k*) Stamp, *ad valorem:* see *ante*, p. 307.

L. OF FREEHOLD PLOT OF LAND FOR BUILDING PURPOSES, SUBJECT TO COVENANTS IN SEPARATE DEED.

of the conditions of the said sale that the purchaser should enter into certain covenants contained in a deed of covenant, dated the —— day of ——, 19—, and expressed to be made between the several persons whose names are subscribed and seals affixed thereto in the Second Schedule thereto of the one part, and the Society of the other part, and that the purchaser should execute the said deed of covenant (which deed has been, or is intended to be executed by any purchaser of any lot or lots of the said —— estate, to the end and intent that all the purchasers of any lot or lots of the said —— estate may be mutually bound by and subject to the restrictions, duties, and liabilities therein contained), which the purchaser has agreed to do: NOW THIS INDENTURE WITNESSETH that, in consideration of the premises (*l*), and of the sum of £—— paid to the Society by the purchaser (the receipt whereof is hereby acknowledged), the Society hereby, as beneficial owners, grant unto the purchaser, ALL THAT, &c. [*parcels*]; TOGETHER WITH [*any right of way to which the purchaser may be entitled*]; TO HOLD all the premises unto and to the use of the purchaser, his heirs and assigns, SUBJECT to the performance and observance of all and every the restrictions, duties, and liabilities imposed upon him by virtue of the said deed of covenant so executed by him as aforesaid.

Testatum.

Conveyance.

Habendum.

Subject to deed of covenant.

[*Statement as to value,* ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

LI. DEED OF COVENANTS *between* VENDORS *and* PURCHASERS *of* LOTS LAID OUT *for* BUILDING PURPOSES (*to accompany the last Precedent* (*m*)).

THIS INDENTURE (*n*), dated the —— day of ——, 19—, and made BETWEEN the several persons whose names are given in the second column of the second schedule hereto, and whose signatures are subscribed and seals affixed hereto in the fourth column of the same schedule (and who are hereinafter referred to as "the purchasers," and each, or any, or one of them is referred to as "the purchaser," or as "a purchaser"), of the one part, and the —— Land Society, Limited, duly registered under the

Parties.

(*l*) *I.e.*, the undertaking of the purchaser to execute the deed of covenant.

(*m*) Notice of this deed should be endorsed on a common title deed retained by the vendors.

Stamp.

(*n*) Stamp, 10*s*.

LI. DEED OF BUILDING COVENANTS.

Industrial and Provident Societies Act, 1893 (hereinafter referred to as "the society"), of the other part: WHEREAS the said society, being the owner in fee simple of an estate known as the —— estate, situate at ——, in the county of ——, delineated in the plan annexed to these presents and marked "A.," and sealed with the common seal of the said society, and therein coloured in part pink and in part green, has laid out the same under a building scheme, and for that purpose has divided the same (exclusive of the projected roads coloured brown on the said plan) into —— lots or thereabouts, which several lots are distinguished on the said plan by consecutive numbers from 1 to ——, both inclusive: AND WHEREAS each of the purchasers has recently purchased from the society such one or more of the said lots as is or are mentioned and placed opposite to his name in the first column of the second schedule hereto (being respectively the same as the lots and corresponding numbers shown in the said plan hereto annexed): AND WHEREAS, upon the treaties for the said respective sales, it was agreed that each purchaser, his heirs and assigns, should observe and perform and have the benefit of the several stipulations set forth in the first schedule hereto, so far as the same are applicable to the lot or lots purchased by him, and should execute these presents: NOW THIS INDENTURE WITNESSETH as follows:—

Recitals: of laying out land in building plots (*o*);

as to identification of lots in schedule and plan.

Testatum.

1. In pursuance of the said agreement, and in consideration of the premises, each of the purchasers, for himself and his assigns (*oo*), doth hereby covenant with the others, and separately with every two and more of the others, and separately with each one of the others of the purchasers, his heirs and assigns, and also separately with the society and its assigns, that the covenantor, his heirs or assigns, and all persons deriving title through, under, or in trust for him or them, shall and will at all times hereafter observe and perform all and every the conditions and stipulations set forth in the first schedule hereto, if and so far as the same conditions and stipulations are applicable to the lot or lots purchased by him and remain to be observed and performed.

Covenants by purchasers with each other and with vendors.

To observe stipulations in First Schedule.

2. The society, for itself and its assigns, hereby covenants with each of the purchasers, his heirs and assigns, that the society

(*o*) See Precedent XLIX., note (*i*), *ante*, p. 413.

(*oo*) As to the use of these words, see K. & E., 10th ed. Vol. I. p. 757.

LI. DEED OF BUILDING COVENANTS.

and its assigns will observe such of the said conditions and stipulations set forth in the first schedule hereto as do not involve the expenditure of money and are applicable to the unsold lots [and the roads coloured brown on the said plan]: AND FURTHER, that every subsequent purchaser of any unsold lot or lots shall execute this indenture as a party thereto of the second part.

Interpretation clause.

3. It is hereby mutually agreed and declared, that in the first schedule hereto (unless and except where such interpretation is inconsistent with the context) the words "the plan" shall mean the plan annexed to these presents; and the words "the property" shall mean the said "—— estate," or, as the context may require, the same estate exclusive of the projected roads shown on the said plan; the word "purchaser" shall mean or include "the person whose name is subscribed and seal affixed to these presents in the second schedule hereto"; and the words "any lot sold at the present sale" shall mean or include any lot in the first column of the second schedule hereto, opposite to which the name of a purchaser is subscribed in the fourth column of the same schedule.

Acknowledgment as to deeds.

4. The society hereby acknowledges the right of the purchasers to production of the title deeds relating to the —— estate mentioned in the third schedule hereto, and to delivery of copies thereof.

Arbitration clause.

5. In case any dispute or difference shall arise between the purchasers (parties hereto), or between any of them, or their respective heirs, executors, administrators, or assigns, on the one hand, and the society, or its assigns, on the other hand, touching these presents, or anything herein contained, or the construction or operation hereof, or the rights, duties, or liabilities of any party in connection with the premises, then in every such case the matter in dispute or difference shall be referred to two arbitrators (one to be appointed by each party to the reference), or their umpire, and this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being subsisting, the provisions whereof shall, as far as may be, apply.

IN WITNESS whereof the said purchasers have hereunto set their hands and seals respectively in the second schedule, and in the fourth column thereof, opposite to the lots purchased by them respectively, on the days set opposite to their respective names

in the third column of the same schedule, and the society has hereunto affixed its seal, countersigned by the secretary on the day and year first above written.

THE FIRST SCHEDULE ABOVE REFERRED TO.

[*Restrictive stipulations and conditions.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. of Lot.	Purchaser's Name.	Date of Execution by Purchaser.	Purchaser's Signature and Seal.	Witness.

THE THIRD SCHEDULE ABOVE REFERRED TO.

[*Muniments of title, see Clause* 4.]

LII. CONVEYANCE *of* REMAINDER *in* FEE *to* TENANT *for* LIFE, *the* TENANT *for* LIFE COVENANTING *to* PAY DEATH DUTIES (*a*).

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*remainderman*], of, &c. (hereinafter called "the vendor"), of the one part, and [*tenant for life*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS under an indenture of settlement dated, &c., and made, &c., the hereditaments hereinafter conveyed stand limited and assured to the

Parties.

Recitals: of title of parties;

(*a*) As to the effect of the merger of the life estate and the remainder in fee, see *Re Mundy and Roper,* [1899] 1 Ch. 275, at p. 296; *Re Lord Wimborne and Browne,* [1904] 1 Ch. 537; *Re Bruen,* [1911] 1 Ir. 76; and Wolstenholme, C. &c. Acts, 10th ed. pp. 362, 452; Key & Elph., 10th ed. p. 584.

(*b*) Stamp, *ad valorem:* see *ante,* p. 307. No increment value duty is payable, the reversion not being within the definition of "fee simple" or "interest in land" under sect. 41 of the Finance (1909-10) Act, 1910, so as to bring the transaction within sect. 4 of the same Act.

LII. RELEASE OF REMAINDER IN FEE TO TENANT FOR LIFE.

use of the purchaser and his assigns during his life, with remainder to the use of the vendor, his heirs and assigns; AND WHEREAS the purchaser has agreed with the vendor for the purchase of the remainder in fee simple of the vendor, expectant on the decease of the purchaser, in the said hereditaments hereinafter conveyed, at the price of £——: AND WHEREAS upon the treaty for the said sale it was agreed that any duty or duties which may become payable in respect of the said hereditaments hereinafter conveyed, upon the decease of the purchaser, shall be paid by the purchaser, and that he shall enter into the covenant hereinafter contained in respect of such duty. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor, as beneficial owner, hereby grants and releases unto the purchaser, ALL THAT, &c. [*parcels*]: TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, subject to the estate for life therein of the purchaser, to the intent that the said estate for life may become merged and extinguished in the remainder and inheritance of the same premises, and that the purchaser may be henceforth seised of or entitled to the same premises for an estate in fee simple in possession; AND the purchaser hereby covenants with the vendor to pay and discharge any duty or duties which may become payable in respect of the premises hereby conveyed upon the death of him, the purchaser, as and when such duty shall become payable, and to keep effectually indemnified the said vendor, his heirs, executors, and administrators, against such duty or duties, and every part thereof, and all actions, proceedings, costs, charges, claims, and demands whatsoever for or on account of the same (*c*).

of agreement for purchase of remainder;

of arrangement as to death duties.

Testatum.

Conveyance.

Parcels.

Habendum.

Covenant for payment of death duties.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

(*c*) This covenant does not seem to be strictly necessary, as it is the general rule that on the sale of a reversionary interest the payment of succession duty on its falling into possession is payable by the purchaser, in the absence of stipulation to the contrary: *Re Repington*, [1904] 1 Ch. 811, at p. 814; *Cooper* v. *Trewby*, 28 Beav. 194; *Re Langham*, 60 L. J. Ch. 110.

LIII. CONVEYANCE *of a* REMAINDER *in* FEE *to a* PURCHASER *who* COVENANTS *to pay* DEATH DUTIES (*d*).

LIII. OF REMAINDER IN FEE TO A PURCHASER.

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS under an indenture dated the —— day of ——, and made between [*parties*], the vendor is seised of the hereditaments hereby assured in fee simple in remainder expectant on the death of [*tenant for life*], of, &c., free from incumbrances: AND WHEREAS the vendor has agreed with the purchaser for the sale to him for the sum of £—— of the reversion in fee simple of him, the vendor, expectant, as aforesaid, of and in the said hereditaments, free from incumbrances: AND the purchaser has agreed to enter into the covenant hereinafter contained for payment of the death duties payable on the death of the said [*tenant for life*], in respect of the said hereditaments: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THOSE, &c. [*describe parcels*]: TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, subject to the life estate therein of the said [*tenant for life*]: AND the purchaser hereby covenants with the vendor that he, the purchaser, will, when and so soon as any duty or duties shall become payable upon the death of the said [*tenant for life*], in respect of the said hereditaments hereby assured, pay and dis-

Parties.

Recitals: of title of vendor;

of agreement for sale.

Testatum.

Covenant by purchaser to pay death duties.

(*d*) The powers of the tenant for life, under the Settled Land Act, 1882, are incapable of being released: see sect. 50 (2); and, in the event of their being exercised by a sale, the purchaser of the remainder would have only an interest in the purchase-money, as capital money arising under the Act, and not in the land itself. Notice of the conveyance should be given to the trustees of the settlement. A purchase made *bonâ fide*, and without fraud or unfair dealing, of a reversionary interest in real or personal property cannot be opened or set aside merely on the ground of undervalue: see 31 Vict. c. 4, s. 1. As to "unconscionable bargains" on the sale of reversionary interests, see the notes to *Chesterfield* v. *Janssen*, White & Tudor's Leading Cases, vol. i.

(*e*) Stamp, *ad valorem:* see *ante*, p. 307. No increment value duty is payable: see *ante*, p. 419, note (*b*).

LIII. OF REMAINDER IN FEE TO A PURCHASER.

charge the same, and will at all times keep the vendor, his heirs, executors, and administrators, indemnified against the same, and every part thereof, and from all actions, proceedings, acts, charges, claims and demands in respect thereof.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

LIV. SURRENDER *of an* ESTATE *for* LIFE *in* POSSESSION *in* FREEHOLDS *to a* REMAINDERMAN (*f*).

Parties.

THIS INDENTURE (*g*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c., of the one part, and [*remainderman*], of, &c., of the other part: WHEREAS [*recite will or settlement, whereby the hereditaments dealt with were devised to or settled to use of tenant for life, with remainder to the child or children of* A. *in fee; and* (*if the case be so*) *death of testator without revoking or altering will; probate of will* (*h*)*; and that remainderman was the only child of* A., *who was dead*]: AND

Contract for purchase.

WHEREAS the said [*remainderman*] has contracted with the said [*tenant for life*] for the purchase of his estate for life in the hereditaments hereinafter surrendered, at the price of £——.

Testatum.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the said [*remainderman*] to the said [*tenant for*

(*f*) See *ante*, p. 419, note (*a*).

(*g*) Stamp, *ad valorem:* see *ante*, p. 307.

(*h*) In the case of a will where the testator died after 1897 his personal representatives must assent to the legacy or convey the estate either by a separate instrument or by joining in this conveyance for that purpose: see *ante*, Precedent III., p. 319. If the assent or conveyance is by a separate instrument it should be recited as follows:—

Recital of conveyance;

"AND WHEREAS by an indenture dated, &c., and made, &c., the said [*executors*] conveyed the hereditaments hereby assured to the uses declared thereof by the said will as aforesaid," *or*,

or assent by personal representative.

"AND WHEREAS by an instrument in writing under their hands, dated the —— day of ——, the said [*executors*] have assented to the devise of the said hereditaments hereby assured in the said will contained as aforesaid."

LIV. SURRENDER OF LIFE ESTATE IN FREEHOLDS TO REMAINDERMAN.

life] (the receipt whereof is hereby acknowledged), the said [*tenant for life*] hereby, as beneficial owner, grants and surrenders unto the said [*remainderman*], ALL THAT [*parcels*]: TO HOLD all the premises unto and to the use of the said [*remainderman*], his heirs and assigns, during the life of the said [*tenant for life*]: To the intent that the estate of the said [*tenant for life*] may be merged and extinguished in the ultimate remainder and inheritance in fee of the premises hereby surrendered.

Surrender.

Parcels.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

LV. CONVEYANCE *in* FEE *of* FREEHOLD REVERSION *to a* LESSEE, PURSUANT *to an* OPTION *of* PURCHASING CONTAINED *in the* LEASE (*i*).

THIS INDENTURE (*k*), made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchasing lessee*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS at the date of the indenture of lease next hereinafter recited, the vendor was seised of the said hereditaments hereinafter described and hereby conveyed for an estate in fee simple in possession, free from in-

Parties.

Recitals: of vendor's seisin subject to mortgage;

(*i*) This conveyance may, if desired, be made by an indenture supplemental to the lease; if so, add, after the description of the parties, the words:—

"AND SUPPLEMENTAL to an indenture of lease, dated, &c., and made, &c. (hereinafter referred to as "the principal indenture"), whereby a messuage and hereditaments at ——, in the county of ——, therein particularly described, were demised unto the purchaser, his executors, &c., from, &c., for the term, &c., at the rent thereby reserved and subject to the covenants, &c., therein contained, with an option to purchase the reversion as therein mentioned."

There will, in that case, be no need to recite the proviso as to purchase of the reversion, and the recitals will commence with the notice of intention to purchase and the lease will throughout be referred to as "the principal indenture."

(*k*) Stamp, *ad valorem:* see *ante*, p. 307. This being the conveyance of a reversion expectant on a term of years, increment value duty will be payable: see sects. 4 and 41 of the Finance (1909-10) Act, 1910.

LV. TO LESSEE OF FREEHOLD REVERSION.

cumbrances: And whereas by an indenture of lease, dated, &c., and made between the vendor of the one part, and the purchaser of the other part, the vendor demised, All that messuage, &c. [*describe parcels fully from the lease*], unto the purchaser, his executors, administrators, and assigns, from the —— day of ——, 19—, for the term of —— years, at the yearly rent of £—— thereby reserved and subject to the covenants on the part of the lessee and conditions therein contained; And in the indenture now in recital was contained a proviso that if the purchaser, his executors, administrators, or assigns should, before the —— day of ——, 19—, give to the person or persons for the time being entitled to the rents and profits of the hereditaments comprised in the same indenture —— calendar months' notice in writing of his desire to purchase the freehold reversion in such hereditaments expectant on the determination of the said term, then the vendor, his heirs and assigns, and all other necessary parties (if any) would, on or before the expiration of such notice, and upon payment of the sum of £——, and of all rent accrued due up to the completion of such purchase, convey the premises comprised in the said indenture of lease unto the purchaser, his executors, administrators, and assigns, in fee simple in possession free from incumbrances, or as he or they should direct; And whereas the purchaser, in pursuance of the proviso in that behalf contained in the said indenture of lease, has recently given to the vendor notice in writing under his hand declaring his desire to purchase the freehold reversion of and in the hereditaments comprised in the said indenture of lease expectant on the determination of the said term, and requiring the vendor to convey the same hereditaments accordingly in manner hereinafter appearing: And whereas the purchaser has duly paid all rent accrued due under the said lease up to the date of these presents, as the vendor doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH that, in pursuance of the proviso in this behalf contained in the said indenture of lease, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser, All that and those the messuage and hereditaments comprised in the said indenture of lease, and therein and also hereinbefore described, To hold all the premises unto and to the use of the purchaser, his heirs and assigns, Subject to the said term of —— years created by the

of lease.

Parcels.

Proviso giving lessee option to purchase reversion:

of notice by lessee of intention to purchase;

of payment of rent due.

Testatum.

Conveyance of freehold reversion.

Parcels.

Habendum,

subject to term to be

said indenture of lease, to the intent that the same term may henceforth be absolutely merged in the reversion and inheritance in fee simple of the premises hereby assured, expectant on the determination of the said term, and be extinguished.

LV. TO LESSEE OF FREEHOLD REVERSION.

merged in the fee simple.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

In witness, &c.

LVI. CONVEYANCE *by* Executors *in* Execution *of a* Contract *for* Sale *by their* Testator (*l*).

THIS INDENTURE (*m*), made the —— day of ——, 19—, Between [*executor*], of, &c., and [*executor*], of, &c., of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: Whereas [*vendor*], of, &c. (hereinafter called "the vendor"), being seised for an estate in fee simple in possession of the hereditaments hereinafter conveyed, entered into a contract in writing with the purchaser for the sale to him of the fee simple, free from incumbrances, of the hereditaments hereinafter conveyed, at the price of £——; [And whereas the title of the vendor was accepted by the purchaser (*n*)]; but the said contract remained unexecuted and unperformed at the time of the decease of the vendor, the said purchase-money of £—— not having been paid, nor any conveyance of the said hereditaments made or executed; And whereas the vendor by his will,

Parties.

Recitals: of contract for sale;

that contrat was not executed in vendor's lifetime;

(*l*) If the testator died since 1897, the proving executor or executors (see Conveyancing Act, 1911, s. 12) can sell by virtue of the Land Transfer Act, 1897, s. 2; but if the testator died before that Act came into operation, unless it is quite clear that there was at the testator's death a contract binding upon himself and the purchaser so as to make the testator *sub modo* a trustee for the purchaser (see *Lysaght* v. *Edwards*, 2 Ch. D. 499; *Re Colling*, 32 Ch. D. 333), or a contract enforceable against his devisees, the concurrence of the devisees should, if possible, be obtained. If a contract binding upon both vendor and purchaser existed at the vendor's death, then the legal estate would devolve upon his personal representatives under sect. 30 of the Conveyancing Act, 1881, while, if there was a contract enforceable only against his heir or devisee, the personal representatives could sell under sect. 4 of the C. A. 1881.

(*m*) Stamp, *ad valorem:* see *ante*, p. 307.

(*n*) Omit this part of this recital if the contract was not binding on the purchaser at the date of the vendor's death.

LVI. BY EXECUTORS PURSUANT TO TESTATOR'S CONTRACT.

dated, &c., appointed the said [*executors*] to be the executors thereof: AND WHEREAS the vendor died on the —— day of —— without having revoked or altered his said will, and the same was duly proved on the —— day of ——, by the said [*executors*], in the Principal Probate Registry; AND WHEREAS the purchaser has requested the said [*executors*] to carry into effect the said contract entered into by the vendor, by conveying and assuring the said hereditaments, in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said contract, and in consideration of the sum of £—— paid to the said [*executors*] by the purchaser (the receipt whereof is hereby acknowledged), they, the said [*executors*] (*z*), hereby, as personal representatives of the vendor, grant unto the purchaser, ALL THAT [*parcels*], TO HOLD all the premises unto and to the use of the purchaser, his heirs and assigns.

of purchaser's request for conveyance.

Testatum.

Conveyance.

Habendum.

[*Add statement as to value*, ante, *p.* 317, *if appropriate.*]

IN WITNESS, &c.

LVII. CONVEYANCE *on* SALE *of* FREEHOLDS *by* PERSONAL REPRESENTATIVES *under Land Transfer Act*, 1897 (*a*).

THIS INDENTURE (*b*), made the —— day of ——, BETWEEN [*personal representative*], of, &c., and [*personal representative*], of, &c. (hereinafter called "the personal representatives"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part.

WHEREAS [*testator*] died on the —— day of —— seised of the hereditaments hereby assured, and without having revoked or

(*z*) If the vendor died prior to Jan. 1st, 1898, and if the contract was not binding upon both parties (see note (*l*), *ante*, p. 425), add here:—"by virtue of the Conveyancing Act, 1881."

(*a*) See Land Transfer Act, 1897, Part I., Preliminary Note, *ante*, p. 314. The administrator's title relates back to the death: *In bonis Pryse*, [1904] P. 301. The subsequent discovery of a will does not invalidate a sale by the administrator of a supposed intestate: see *Hewson* v. *Shelley*, [1914] 2 Ch. 13.

(*b*) Stamp, *ad valorem:* see *ante*, p. 307.

altered his will, dated, &c., whereby he appointed the personal representatives executors thereof, by whom the said will was proved on the —— day of —— in the Principal Probate Registry [*or*, "and intestate, and letters of administration of his real and personal estate were granted to the personal representatives on the —— day of ——"] (*c*).

And whereas the personal representatives have agreed with the purchaser for the sale to him of the hereditaments hereby assured in fee simple in possession, free from incumbrances, for the sum of £——.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the personal representatives (the receipt whereof is hereby acknowledged), the personal representatives, as personal representatives of the said [*testator* or *intestate*], deceased, by virtue of the powers conferred upon them by the Land Transfer Act, 1897, and of every other power enabling them in this behalf, hereby grant unto the purchaser. All that, &c. [*describe parcels*], To hold the same unto and to the use of the purchaser, his heirs and assigns (*d*).

[*Add statement as to value*, ante, *p.* 317, *if required*.]

In witness, &c.

(*c*) If the land is registered, recite:—

"Whereas the said [*testator* or *intestate*] was at the time of his death registered under the Land Transfer Acts, 1875 and 1897, as proprietor of the land under the heading, District ——, Parish ——, and Title No. ——, with a —— title."

(*d*) If the land is registered, add the following covenant:—

"The personal representatives hereby covenant with the purchaser that they will immediately after the execution of these presents execute and deliver to the purchaser, ready for registration under the Land Transfer Acts, 1875 and 1897, an instrument of transfer of the hereditaments hereby assured, which has already been prepared."

LVIII. OF FREEHOLDS OF AN INFANT ON SALE BY COURT IN ADMINISTRATION ACTION.

LVIII. CONVEYANCE *on* SALE *by the* COURT *in an* ADMINISTRATION ACTION *by* PERSON *nominated by the* COURT *to* CONVEY *on behalf of an* INFANT (*e*).

Parties.

THIS INDENTURE (*f*), made the —— day of ——, 19—, BETWEEN [*person appointed to convey*], of, &c., of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Recitals: of infant's title:

WHEREAS [*recite will of testator devising the land to an infant in fee simple, and death of the testator and probate of his will; or the death of intestate whereby the infant became entitled to the land as heir-at-law, and grant of administration*]:

seisin of testator;

AND WHEREAS the said testator [*or*, intestate] was at the time of his death seised of the hereditaments hereby assured for an estate in fee simple in possession, free from incumbrances:

assent to devise (*g*);

AND WHEREAS the said [*executors* or *administrators*] have assented to the devises contained in the said will to the said [*infant*]]:

of order for administration action;

AND WHEREAS by an Order of the Chancery Division of the High Court of Justice, made by Mr. Justice, &c., on the —— day of ——, in an action entitled, *Re X.*, *A.* v. *B.*, 19—, No. —, for the administration of the estate of the said testator [*or*, intestate], it was ordered, among other things, that the real estate of the said testator [*or*, intestate] should be sold; AND that the money to arise by such sale should be paid into Court, to the credit of the said action to the account of, &c.;

of order for sale;

AND WHEREAS, in pursuance of the said order, the said real estate was, on the —— day of ——, put up by the said [*person appointed to convey*] (being the person having the conduct of the sale of the said real estate) for sale by public

of sale by auction pursuant to order (*h*);

(*e*) See sect. 33 of the Trustee Act, 1893, empowering the High Court to appoint persons to convey in all cases where under the previous provisions vesting orders can be made. As to how far the order of the Court is conclusive for the protection of the purchaser, see the Conveyancing Act, 1881, s. 70; and *Jones* v. *Barnett*, [1900] 1 Ch. 370. This form can be adapted *mutatis mutandis* to the case where a person is appointed to convey on behalf of a lunatic trustee.

(*f*) Stamp, *ad valorem:* see *ante*, p. 307.

(*g*) This recital will only be inserted if the testator died after 1907: see Land Transfer Act, 1897, Preliminary Note, *ante*, p. 314.

(*h*) If the sale was by private contract, say—

"AND WHEREAS the said [*person appointed to convey*] (being the person having the conduct of the sale of the said real estate),

auction at —— in —— lots, free from incumbrances, according to certain printed particulars of sale, wherein lot — comprised the lands and hereditaments hereby conveyed; AND WHEREAS at the said sale the purchaser was the highest bidder for and was declared to be the purchaser of the said lot — at the price of £——; AND the purchaser thereupon paid to [*auctioneer*], the person appointed by the said judge to receive the same, the sum of £—— by way of deposit, and the same sum has since been paid by the said [*auctioneer*] into Court to the credit aforesaid (*i*); AND WHEREAS, on the —— day of ——, the result of the said sale was duly certified; AND WHEREAS by an order made on the —— day of —— in the said action, and in the matter of the Trustee Act, 1893, it was ordered that the purchaser should (*k*), on or before the —— day of ——, pay into Court to the credit aforesaid the sum of £——, being the balance of the purchase-money of the lot so purchased by him as aforesaid after deducting the said sum of £—— so paid by way of deposit as aforesaid, together with interest on the said sum of £—— for interest thereon at the rate of —— per cent. per annum from the —— day of —— until payment of the same sum; AND it was further ordered that, upon such payment as aforesaid being made, the purchaser should be let into possession or into the receipt of the rents and profits of the said hereditaments as from the —— day of ——, 19—, and that all proper parties should execute a proper conveyance of the said lands and hereditaments hereby conveyed unto the purchaser.

of purchase and payment of deposit;

of certificate of result of sale;

of order for payment of balance of purchase-money and interest, and for conveyance;

---

lately agreed with the purchaser, subject to the approval of the said judge being obtained, for the sale to the purchaser of the said hereditaments hereinafter described and hereby conveyed at the price of £——, and the purchaser thereupon paid to the said [*person appointed to convey*] the sum of £—— by way of deposit, and the same sum has since been paid by the said [*person appointed to convey*] into Court to the credit aforesaid."

The next following recital will be omitted.

(*i*) If the title is forced upon the purchaser there will here follow a recital of the order of reference as to title, and of the Chief Clerk's certificate as to title.

(*k*) If the sale was by private contract, say—

"the said provisional contract was confirmed and ordered to be carried into effect, and it was further ordered that the purchaser," &c.

LVIII. OF FREEHOLDS OF AN INFANT ON SALE BY COURT IN ADMINISTRATION ACTION.

or as he should direct; AND the Court being of opinion that the said [*infant*] was to be deemed possessed of the said lands and hereditaments hereby conveyed upon a trust within the meaning of the Trustee Act, 1893 (*l*), it was ordered that the said [*person appointed to convey*] be appointed to convey the said lands and hereditaments for the estate of the said [*infant*] therein (*m*); AND

of payment of purchase-money, &c.

WHEREAS, in pursuance of the last mentioned order, the purchaser, on the —— day of ——, paid into Court the sum of £—— [*balance of purchase-money*], and a further sum of £——, being interest thereon, to the credit aforesaid; AND WHEREAS the purchaser is desirous that the said lands and hereditaments should be

Testatum.

conveyed to him in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that, in pursuance of the hereinbefore recited orders, and in consideration of the said sums of £——, £——, and £——, making in the whole the sum of £—— so paid by the purchaser as hereinbefore is mentioned, and of the

Conveyance.

premises, the said [*person appointed to convey*], under the hereinbefore recited order of the Court of the —— day of ——, 19—, hereby grants and conveys (*n*) unto the purchaser, ALL THAT

Habendum.

[*describe parcels*], TO HOLD the same unto and to the use of the purchaser, his heirs and assigns.

[*Add statement as to value, if required, see* ante, *p.* 317.]

IN WITNESS, &c. (*o*).

(*l*) See sects. 31 and 33 of the Act; and see *Foster* v. *Parker,* 8 Ch. D. 147; *Mellor* v. *Porter,* 25 Ch. D. 158.

(*m*) Before the Lunacy Act, 1911, it was necessary, if a vesting order were required in the case of a lunatic trustee, to have recourse to the jurisdiction in lunacy; but see now Lunacy Act, 1911 (1 & 2 Geo. V. c. 40), s. 1, by which the powers of a judge in Lunacy to make vesting orders (except as to lunatic mortgagees not being also trustees) are transferred to the High Court.

(*n*) The person appointed to convey being expressed to convey "under an order of the Court," the statutory covenant against incumbrances will be here implied: see sect. 7, sub-sect. 1 (F) of the Conveyancing Act, 1881. The person appointed to convey, under the Trustee Act, 1893, cannot give any covenant for title on the part of the person for whom he conveys (see *Cowper* v. *Harmer,* 57 L. J. Ch. 460), though the committee of a lunatic selling under sect. 124 of the Lunacy Act, 1890, might be authorised to give such covenants on behalf of the lunatic: see *Re Ray,* [1896] 1 Ch. 468.

(*o*) The person appointed to convey executes the conveyance in his own name.

LIX. CONVEYANCE *of* EQUITABLE INTERESTS *in* COPYHOLDS *to a* PURCHASER *by* TENANTS *in* COMMON (*p*).

LIX. OF EQUITABLE INTEREST IN COPYHOLDS.

THIS INDENTURE (*q*), made the —— day of ——, BETWEEN [*vendor*], of, &c., and [*vendor*], of, &c. (hereinafter called "the vendors"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*testator*], of, &c., duly made and executed his will dated the —— day of ——, and thereby gave and devised (among other hereditaments) all the copyhold hereditaments hereinafter described unto and to the use of [*trustees*] upon trust to pay the rents and profits thereof to his wife [*wife*], for her life, and after her decease upon trust for such one or more of his (the said testator's) daughters as should be living at the time of the decease of his said wife, or should have died in her lifetime, leaving lawful issue them respectively surviving, and their respective heirs and assigns, equally as tenants in common, with remainders over on default or failure of such issue, as therein is mentioned: AND WHEREAS the said testator died on the —— day of ——, without having revoked or altered his said will, and the same was, on the —— day of ——, proved in the —— District Probate Registry, by the executors therein named: AND WHEREAS the said [*wife*] died on the —— day of ——: AND WHEREAS the vendors and [*other daughter*], now the wife of [A. B.], are the only surviving children of the said testator: AND [*deceased daughter*] now deceased, the only other child of the said testator, died on the —— day of —— without issue: AND WHEREAS at a court held on the —— day of ——, for the manor of ——, whereof the hereditaments hereby assured are holden, the said [*trustees*] were admitted tenants of the said hereditaments, upon the trusts, and with and subject to the powers and provisions in the hereinbefore-recited will declared and contained of and concerning the same:

Parties.

Recitals: of devise of copyholds to testator's wife for life, remainder to such of his daughters as should survive her in fee;

of death of testator;

of death of wife;

vendors and another the only surviving children;

of admittance of trustees.

(*p*) Equitable interests in copyholds are not surrendered, but are transferred by deed in the usual form except that equitable estates in tail in copyholds may be barred either by deed or by surrender under sects. 50 and 53 of the Fines and Recoveries Act (3 & 4 Will. IV. c. 74). By sect. 90 of the same Act a married woman may surrender an equitable estate in copyholds with the concurrence of her husband, she having been separately examined.

(*q*) Stamp, *ad valorem:* see *ante*, p. 307.

LIX. OF EQUITABLE INTEREST IN COPYHOLDS.

Contract for sale of two undivided shares.

Testatum.

AND WHEREAS the vendors have contracted with the purchaser for the sale to him of the two equal undivided third parts or shares of and in the said copyhold hereditaments, to which they the vendors are equitably entitled under the trusts of the said will and the inheritance thereof according to the custom of the said manor for the price of £——: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the vendors in the proportions following, that is to say, the sum of £——, part thereof, to the said [*one vendor*], and the sum of £——, the remainder thereof, to the said [*other vendor*] (of which several sums of £—— and £——, making together the sum of £——, the vendors hereby acknowledge the receipt respectively), they the

Conveyance.

vendors respectively, according to their respective shares, estates and interests in the hereditaments hereinafter described, hereby as

Parcels.

beneficial owners convey and release unto the purchaser, ALL THOSE two equal undivided parts or shares of or to which the vendors respectively are so equitably entitled as aforesaid of and in

Habendum to purchaser and his heirs.

[*describe parcels*], TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, henceforth for ever, at the will of the lord, according to the custom of the said manor of ——, by and under the accustomed rents and services.

[*Add statement as to value,* ante, *p.* 317, *if required.*]

IN WITNESS, &c. (*r*).

(*r*) It will be proper to enter on the court rolls either the deed itself, or a short memorandum to the following effect:—

Memorandum of release to be entered on the court rolls.

"BE IT REMEMBERED, that, by indenture, dated, &c., and made between, &c., the said [*vendors*] did convey and release unto the said [*purchaser*], and his heirs, their two equal undivided shares, in ALL [*parcels*], to which hereditaments the said [*purchaser*] was admitted on the —— day of ——."

No fines are payable on the devolution of equitable interests in copyholds: see *Hall* v. *Bromley,* 35 Ch. D. 642.

LX. BARGAIN *and* SALE *of* COPYHOLD LAND *by the* TESTAMENTARY DONEES *of a* POWER (*s*).

LX. BARGAIN AND SALE OF COPYHOLDS UNDER A POWER IN A WILL.

THIS INDENTURE (*t*), made the —— day of ——, 19—, BETWEEN [*vendors*], of, &c. (hereinafter called "the vendors"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*testator*], late of ——, deceased, was at the time of his death seised of the copyhold hereditaments hereinafter described and assured, to which on the —— day of ——, he was admitted tenant according to the custom of the manor of ——: AND WHEREAS the said [*testator*] by his will, dated the —— day of ——, appointed the vendors executors and trustees thereof, and directed them to sell and dispose of all his copyhold messuages, lands, and hereditaments whatsoever (*u*) [*or*, and devised all his copyhold messuages, lands, and hereditaments whatsoever, to such uses as the vendors should appoint, and in default of appointment then to the use of the vendors, their heirs and assigns, upon trust to sell the same hereditaments as therein mentioned]: AND WHEREAS the said [*testator*] died on the —— day of ——, without having revoked or altered his said will, and the same was on the —— day of —— proved in the Principal Probate Registry: AND WHEREAS the vendors have agreed with the purchaser for the sale to him of the hereditaments hereby assured, and the inheritance thereof, according to the custom of the said manor, free from all incumbrances, at the price of £——. NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £——, now paid to the vendors by the purchaser (the receipt whereof is hereby acknowledged), the vendors, in pursuance of the direction [*or*, power] and authority for this purpose contained in the hereinbefore recited will, and of all other powers and authorities enabling them in this behalf, hereby as trustees bargain, sell, appoint, and convey unto the

Parties.

Recitals:

of will creating power of sale;

of death of testator;

of contract for sale.

Testatum.

Parcels.

(*s*) If the sale is carried out before the lord has required the trustees or the heir to be admitted, the purchaser is entitled to be admitted under the will on payment of a single fine: see *Reg.* v. *Wilson*, 3 B. & S. 201; *Glass* v. *Richardson*, 2 De G. M. & G. 658; *Re Heathcote and Rawson*, 57 Sol. J. 374. The conveyance is made by bargain and sale or by appointment without any surrender.

(*t*) Stamp, *ad valorem:* see *ante*, p. 307.

(*u*) If the terms of the power or direction to sell are in any way special they should be fully recited, as also the receipt clause, if any.

LX. BARGAIN AND SALE OF COPYHOLDS UNDER A POWER IN A WILL.

purchaser, ALL THOSE several pieces or parcels of land, containing together —— acres and —— roods, situate in the parish of ——, in the county of ——, particularly described in the schedule hereto, TO HOLD the same unto and to the use of the purchaser, his heirs and assigns for ever, at the will of the lord and according to the custom of the aforesaid manor; and by and under the suits, services, rents, fines, and heriots theretofore due and of right accustomed (*x*).

Allotment.

Habendum.

[*Add the statement as to value,* ante, *p.* 317, *if required.*]

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

LXI. ASSIGNMENT *of* LEASEHOLDS *to the* PURCHASER *of* ONE *of* SEVERAL LOTS *sold by* AUCTION; COVENANTS *by the* PURCHASERS *to* PAY *the* PROPORTION *of the* RENT, *and to* OBSERVE *the* COVENANTS *of the* LEASE *in respect of the* LOTS PURCHASED *by them respectively.* POWER *of* ENTRY *to secure* PAYMENT *of* APPORTIONED RENTS *and* OBSERVANCE *of* COVENANTS *by* PURCHASERS *of other* LOTS (*y*).

THIS INDENTURE (*z*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"),

Parties.

(*x*) Where a bare authority was given to several executors, and one of them refused the office, the others were disabled at the common law from exercising the power: Co. Litt. 113a. But by stat. 21 Hen. 8, c. 4, where some of several executors, donees of a power of this kind over freeholds, disclaim, the rest may validly exercise the power. And it has been held that copyholds, though not expressly named in the statute, are within its operation: *Peppercorn* v. *Wayman,* 5 De G. & S. 230. And now, under sect. 16 of the stat. 22 & 23 Vict. c. 35, a power of sale is exerciseable, where realty is charged with debts, &c., by the acting executors or executor.

Stat. 21 Hen. 8, c. 4, and 22 & 23 Vict. c. 35.

(*y*) On a sale by auction of leaseholds in lots, the two most usual modes of conveying the property are either by assignment to each purchaser of the lot purchased by him, as in the text of this precedent, or by assigning the whole property comprised in the lease to the purchaser of a particular lot, who grants underleases of the other lots to their respec-

Sale of leaseholds in lots.

(*z*) Stamp, *ad valorem:* see *ante,* p. 307.

LXI. ASSIGNMENT OF LEASEHOLD LOT TO PURCHASER.

of the first part; [*purchaser of lot* 1], of, &c., and [*purchaser of lot* 2], of, &c., of the second part (*a*); and [*purchaser of lot* 3], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS by an indenture of lease dated, &c., and made, &c., the piece or parcel of land hereinafter described and hereby assigned was, together with other lands, demised unto the said [*lessee*], his executors, administrators, and assigns, to hold the same from the —— day of ——, for a term of ninety-nine years, at the yearly rent of £——, and subject to the covenants on the part of the lessee and conditions therein contained: AND WHEREAS under or by virtue of divers assignments and acts in the law, and ultimately by an indenture dated, &c., and made, &c., the lands and hereditaments comprised in the said lease have become vested in the vendor for the unexpired residue of the said term of ninety-nine years, at the rent and subject to the covenants on the part of the lessee and conditions contained in the said indenture of lease (*c*): AND WHEREAS the vendor has agreed

Recitals: of lease (*b*); of mesne assignments; of agreement.

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tive purchasers: forms of such last-mentioned assignment and underlease will be found in the two next following precedents. The conditions of sale should specify which mode of conveyance is to be adopted: forms of such conditions will be found *ante, sub tit.* "Conditions of Sale," pp. 258, 259. A preferable mode of transferring the property is for the vendor to surrender the original lease, and for the lessor to grant fresh leases of the several lots to their respective purchasers at apportioned rents; but the lessor's consent to such an arrangement cannot always be obtained. In agreements for leases of building land, where a speedy resale of the property in lots by the builder is contemplated, it is very usual to stipulate that the lessor shall grant separate leases to the respective purchasers.

(*a*) If the purchasers are numerous, it will be convenient, instead of here naming and describing them, to say,

"the several persons whose names and seals are subscribed in and affixed to the schedule hereto, of the second part"; and, &c.

(*b*) It does not seem necessary in this case to recite the sale by auction. It is generally advisable to avoid the recital of a sale by auction, if possible, in order that the particulars and conditions of sale may not be put upon the title to the land.

Recital of sale by auction.

(*c*) In the case of registered land, say,

"and the vendor is registered as proprietor thereof under the heading District ——, Parish ——, Title No. —."

As to registration of leaseholds, see L. T. Act, 1875, ss. 11 (as

LXI. ASSIGNMENT OF LEASEHOLD LOT TO PURCHASER.

with the purchaser for the sale to him of the piece or parcel of land hereby assigned, being part of the lands comprised in the said indenture of lease, for the unexpired residue of the said term, for the price of £——: AND WHEREAS the vendor has recently agreed with the said [*purchasers of lots* 1 *and* 2 (*d*)] for the sale to them respectively of certain other pieces or parcels of land (*e*), being the remainder of the lands and hereditaments comprised in the said indenture of lease, and the same have been or are intended to be assigned unto the said [*purchasers of lots* 1 *and* 2] (*f*) by several indentures bearing even date with these presents: AND WHEREAS it has been agreed that the said [*purchasers of lots* 1 *and* 2] (*f*) shall enter into such covenants on their parts respectively and give to the purchaser such powers of entry as are hereinafter contained. NOW THIS INDENTURE WITNESSETH as follows:—

for sale of lot 3:

of agreements for sale of other lots:

of agreements as to covenants, and powers of distress and entry.

Testatum.

Assignment.

1. In pursuance of the said agreement in this behalf, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, assigns unto the purchaser. ALL THAT [*describe parcels* : TO HOLD the same unto the purchaser for all the residue now unexpired of the said term of ninety-nine years granted by the said indenture of lease, subject to the yearly rent of £——, being the amount apportioned in respect of the premises hereby assigned of the yearly rent of £ — reserved by the hereinbefore recited indenture of lease, to be paid at the

Parcels.

Habendum.

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altered by L. T. R. 67, and s. 14 of the L. T. Act, 1897) and 13; and L. T. R. 50—67; L. T. R. 1908, 18, 19, 53. As to transfers, L. T. Act, 1875, ss. 34, 35, 38, and 39; L. T. Act, 1897, sched.; and L. T. R. 138 *et seq.* Registration is not compulsory on an assignment of a lease not having at least forty years to run or two lives yet to fall in: L. T. R. 69. As to implied covenant by transferor for validity of the lease and by transferee for payment of rent and observance of covenants, &c. and to indemnify transferor, see L. T. Act, 1875, s. 39.

(*d*) If the purchasers are numerous, say,

"has agreed with the said several parties thereto of the second part respectively, &c."

(*e*) If the purchasers are numerous, insert here:—

"which several pieces or parcels of land are particularly mentioned in the said schedule hereto opposite the names of the respective purchasers thereof."

(*f*) *Or*, "the several purchasers thereof respectively."

times and in manner appointed by the said indenture of lease for the payment of the whole rent thereby reserved, and subject to the covenants on the part of the lessee and conditions therein contained, so far only as such covenants and conditions relate to the premises hereby assigned.

Covenant by purchaser to pay proportion of rent and perform covenants;

2. The purchaser hereby covenants with the vendor that he, the purchaser, his executors, administrators, or assigns, will henceforth pay the said yearly rent of £—— so apportioned and agreed to be paid by him and them in respect of the premises hereby assigned; AND ALSO will perform and observe the covenants, conditions, and agreements in the said indenture of lease contained, on the part of the lessee to be performed and observed, so far only as the same relate to the purchaser, his executors, and administrators, and the premises hereby assigned; AND ALSO that the purchaser, his executors, or administrators, will keep indemnified the vendor, his executors, administrators, and assigns, from all actions, costs, proceedings, charges, damages, and expenses whatsoever by reason of the non-payment of the said apportioned rent of £——, or of the non-performance of all or any of the said covenants, conditions, and agreements so far as the same relate to the premises hereby assigned.

and to indemnify vendor therefrom.

Covenants by purchasers of other lots to pay apportioned rents, &c.

3. In pursuance of the said agreement in this behalf, and in consideration of the premises, each of them, the said [*purchasers of lots* 1 *and* 2] (*g*), but so far only as relates to the piece or parcel of land and premises so purchased by him as aforesaid, and to the acts, defaults, and omissions of himself, his executors, administrators, and assigns, in relation thereto, hereby, for himself and his assigns, covenants with the purchaser that they the said [*purchasers of lots* 1 *and* 2] respectively (*h*), and their respective executors, administrators, or assigns, will at all times hereafter duly pay the yearly rents of £ —— and £—— respectively (*i*) apportioned and agreed to be paid by them respectively in respect

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(*g*) *Or*, "each of them the said several parties hereto of the second part."

(*h*) *Or*, "they the said several parties hereto of the second part respectively."

(*i*) *Or*, "the several yearly rents set opposite to their respective names in the said schedule hereto, being the rents respectively apportioned," &c.

LXI. ASSIGNMENT OF LEASEHOLD LOT TO PURCHASER.

of the several pieces or parcels of land purchased by them respectively as aforesaid, and will perform and observe the covenants, conditions, and agreements in the said indenture of lease contained and on the part of the lessee to be performed and observed, so far as relates to the same pieces or parcels of land respectively; And also that they, the said [*purchasers of lots* 1 *and* 2] respectively (*k*), and their respective executors or administrators, will at all times hereafter effectually keep indemnified the purchaser, his executors, administrators, and assigns, from the said several apportioned rents so covenanted to be paid by them respectively, and from all actions, proceedings, costs, charges, damages, and expenses whatsoever by reason of the non-payment of the same rents respectively, or of the non-performance or non-observance of all or any of the said covenants, conditions, and agreements so far as aforesaid: And further, that if the purchaser, his executors, administrators, or assigns, shall at any time or times hereafter pay any sum or sums of money, or sustain or incur any costs, charges, damages, or expenses by reason of the breach, non-performance, or non-observance of the covenants for payment of the said apportioned yearly rents hereinbefore covenanted to be paid, or of the other covenants, conditions, and agreements hereinbefore covenanted to be performed and observed by the said [*purchasers of lots* 1 *and* 2] respectively (*m*), and their respective executors, administrators, and assigns, or any of such covenants, conditions, or agreements, then and in every such case, and so often as the same shall happen it shall be lawful for the purchaser, his executors, administrators, or assigns, to enter into and upon the piece or parcel of land in respect of which such pay-

Power of entry (*l*).

(*k*) *Or,* "They the said several parties hereto of second part respectively."

(*l*) If the lease has more than twenty years to run the following proviso should be added at the end of this clause:—

"Provided always, and it is hereby declared that the power of entry hereinbefore given to the purchaser shall be restricted to the life of the survivor of the issue now living of His late Majesty King Edward the Seventh, and twenty-one years after the death of such survivor, and such further period for which the same may lawfully be so given."

(*m*) *Or,* "the said several parties hereto of the second part respectively."

LXI. ASSIGNMENT OF LEASEHOLD LOT TO PURCHASER.

ments shall be made or such costs, charges, damages, or expenses shall be incurred as aforesaid, or any part thereof, and receive and take the rents and profits thereof for the use of the purchaser, his executors, administrators, and assigns, until he or they shall be fully paid and reimbursed all such sums of money, costs, charges, damages, and expenses as aforesaid.

Acknowledgment, &c. as to muniments of title (*n*).

4. The said [*purchaser of lot* 1 *or lot* 2, *as the case may be*] hereby acknowledges the right of the purchaser to the production and delivery of copies of the said indenture of lease [and the other documents specified in the first schedule] hereto (which it has been agreed shall be retained by the said [*purchaser of lot* 1 *or lot* 2]), and hereby undertakes for the safe custody thereof.

[*Add statement as to value*, ante, *p.* 317, *if required.*]

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO (*o*).

THE SECOND SCHEDULE ABOVE REFERRED TO.

Acknowledgment and undertaking as to documents of title.

(*n*) On a sale of leaseholds in lots the conditions of sale usually provide that the custody of the lease and other documents relating to the whole of the property sold shall be delivered to the purchaser of a specified lot, or to the purchaser whose purchase-money is of the largest amount: see *ante*, pp. 262, 263. All the assignments, therefore, of the lots, other than the lot of the purchaser who retains the documents, should contain a statutory acknowledgment on the part of such purchaser for production and delivery of copies of the documents, and an undertaking by him for safe custody thereof. If the documents are retained by the vendor, either by reason of the specified lot being unsold or otherwise, an acknowledgment and undertaking will be given by him to the several purchasers.

Schedule.

(*o*) The first schedule will contain particulars of the muniments as to which the acknowledgment is given. The second schedule (which will only be required if the purchasers are numerous) should contain a short description of each lot, the apportioned rents, names and addresses of purchasers and amounts of purchase-moneys, and may be in the following form:—

THE SECOND SCHEDULE ABOVE REFERRED TO.

Number of Lot.	Description of Property.	Apportioned Yearly Rent.	Name and Address of Purchaser.	Amount of Purchase-money.

LXII. ASSIGNMENT OF LEASEHOLDS TO PURCHASER OF LARGEST LOT, WHO IS TO GRANT UNDERLEASES.

LXII. ASSIGNMENT *of* LEASEHOLDS SOLD *in* LOTS *to* ONE *of the* PURCHASERS, *to the* INTENT *that* HE *may* GRANT UNDERLEASES *to the* OTHER PURCHASERS (*n*).

THIS INDENTURE (*o*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the assignee"), of the other part: WHEREAS [*recite lease describing the parcels from the lease, and mesne assignments, if any, ut ante*, p. 435]: AND WHEREAS the vendor has recently agreed with the assignee and the other persons whose names are mentioned in the [first] schedule hereto for the sale to them respectively of the messuages, lands, and premises comprised in the hereinbefore recited indenture of lease in the lots, subject to the apportioned rents, and at the prices respectively mentioned in the same schedule: AND WHEREAS, upon the treaty for the said sales, it was agreed that the assignee should take an assignment of the said premises comprised in the said indenture of lease, and

Conveyance of leasehold lots by assignment and underleases.

(*n*) A condition of sale providing for such mode of conveyance will be found *ante, sub tit.* "Conditions of Sale," p. 258. The position of the purchaser taking the assignment of the lease (who is usually the purchaser of the largest or of the most valuable lot) is not altogether satisfactory, inasmuch as he becomes liable for the whole rent reserved by the lease, and in respect of the covenants and conditions of the lease as regards the whole property therein comprised. Moreover, the other purchasers are strangers to him, in whose selection as his underlessees he has had no voice; and he must either expressly covenant with the other purchasers for payment of the apportioned rent and performance of the covenants, &c. of the lease so far as regards his own lot, or (which is more usual and virtually amounts to the same thing) enter into the usual qualified lessor's covenant for quiet enjoyment without disturbance by himself or any person claiming under him. In order to protect him as far as possible the apportioned rents of other purchasers are reserved to him, and covenants on their part are inserted in the underleases for payment of their respective apportioned rents and performance of the covenants, &c. of the lease so far as relates to their respective lots; and a power of re-entry is very usually given to the assignee purchaser on breach of such covenants; but it seems that he cannot insist on the insertion of such a power in the underleases, unless its insertion is expressly provided for in the conditions of sale: see *Hodgkinson* v. *Crowe*, L. R. 10 Ch. 622.

(*o*) Stamp, *ad valorem* on the amount of purchase-money paid by the assignee: see p. 307, *ante*.

should execute to the other purchasers such underleases as are hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the sum of £—— paid to the vendor by the assignee (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, assigns unto the assignee, ALL THOSE the said messuages and pieces or parcels of land and premises comprised in and demised by the said indenture of lease, and particularly mentioned in the said [first] schedule hereto, TO HOLD all the premises hereby assigned unto the assignee, for the unexpired residue of the said term of —— years, at the rent reserved by and subject to the covenants on the part of the lessee and conditions contained in the said indenture of lease, and henceforth to be paid, performed, and observed. AS TO the premises comprised in lot 1 according to the description thereof contained in the said [first] schedule hereto, for the absolute use and benefit of the assignee, his executors, administrators, and assigns; AND as to all the residue of the premises comprised in the said indenture of lease, other than the said premises so comprised in lot 1 as aforesaid, UPON TRUST at any time hereafter, upon the request of the vendor, his executors, administrators, or assigns, to make and execute unto and at the cost of the respective purchasers mentioned in the said [first] schedule hereto other than the assignee, underleases of such parts of the premises comprised in the said indenture of lease as are comprised in the several lots set opposite to their respective names in the same schedule according to the description thereof respectively therein contained, to commence from the —— day of —— next, for the unexpired residue of the said term of —— years except the last day thereof, at the apportioned yearly rents respectively mentioned in the said [first] schedule hereto, and to commence respectively and be payable as from the said —— day of ——, such underleases to contain (*p*) all necessary covenants for payment of the said

LXII. ASSIGNMENT OF LEASEHOLDS TO PURCHASER OF LARGEST LOT, WHO IS TO GRANT UNDERLEASES.

Testatum.

Parcels.

Habendum.

As to lot 1 absolutely.

As to residue.

In trust to grant underleases.

(*p*) Sometimes a form of the intended underleases is annexed to the deed of assignment, in which case say here:—

"Such underleases to be according to the form of an underlease set out in the second [*or*, third] schedule hereto, or as near thereto as the circumstances of each case will permit."

LXII. ASSIGNMENT OF LEASEHOLDS TO PURCHASER OF LARGEST LOT, WHO IS TO GRANT UNDERLEASES.

apportioned rents (*q*) mentioned in the same schedule respectively, and for the performance by the respective purchasers of the covenants on the part of the lessee and conditions contained in the said indenture of lease so far as such covenants and conditions relate to such parts of the premises comprised in the same lease as are purchased by the said purchasers respectively, and for indemnifying the assignee, his heirs, executors, administrators, and assigns, against the non-payment of the said apportioned rents respectively, and the breach, non-performance, or non-observance of the covenants and conditions of the said indenture of lease in respect of the parts of the said premises purchased by the said purchasers respectively, and also a power of entry (*r*) by the assignee, his executors, administrators, and assigns, on non-payment of the said apportioned rents respectively, or on breach, non-performance, or non-observance of the covenants and conditions of the said indenture of lease, and all other necessary and proper covenants, powers, and provisions; AND in the meantime, and until such underleases shall be made and executed as aforesaid, UPON TRUST for the vendor, his executors, administrators, and assigns, subject nevertheless to the payment, performance, and observance by the vendor, his executors and administrators, of the apportioned rents, covenants, and conditions hereinafter mentioned, and covenanted to be paid, performed, and observed by him and them respectively; AND the assignee, for himself and his assigns, hereby covenants with the vendor that he the assignee, his executors, administrators, or assigns, will from time to time pay the rent reserved by and perform and observe the covenants and conditions in the hereinbefore recited indenture of lease contained and on the lessee's part to be performed and observed, and will at all times hereafter keep indemnified the vendor, his heirs, executors, administrators and assigns, from all actions, proceedings, costs, damages, expenses, claims, and demands for or in respect of non-payment of the said rent, or breach, non-performance, or non-observance of the said covenants and conditions, or any of them; PROVIDED ALWAYS, and the vendor, for himself and his assigns,

And meanwhile in trust for vendor.

Covenants by purchaser.

Covenants by vendor to pay

(*q*) The apportioned rents should be made payable half-yearly or quarterly as in the lease, and the dates fixed should be one or more days earlier than those fixed by the lease.

(*r*) See *ante*, p. 440, note (*n*).

LXII. ASSIGNMENT OF LEASEHOLDS TO PURCHASER OF LARGEST LOT, WHO IS TO GRANT UNDERLEASES.

hereby covenants with the purchaser, that until all such underleases as aforesaid shall have been made and executed, he the vendor will on demand pay to the purchaser, his executors, administrators and assigns, all and every sums or sum of money which he or they shall pay under the covenant lastly hereinbefore contained in respect of any apportioned rents in relation to the premises hereby assigned (other than the premises so comprised in lot 1 as aforesaid), or such parts or part of the same premises whereof no underleases or underlease shall for the time being have been made and executed as aforesaid; AND will keep indemnified the purchaser, his heirs, executors, and administrators against all actions, proceedings, costs, charges, damages, and expenses, for or in respect of all and any such apportioned rents as last aforesaid, and for or in respect of any breach, non-performance, or non-observance of any of the covenants on the part of the lessee, and conditions contained in the said indenture of lease so far as the same respectively relate to the premises hereby assigned (other than the premises so comprised in lot 1 as aforesaid), or such parts or part of the same premises whereof no underleases or underlease shall for the time being have been made and executed; AND the purchaser hereby acknowledges the right of the vendor, until all such underleases as aforesaid shall have been made and executed, but not thereafter, to production of the said indenture of lease [and the other documents specified in the second schedule hereto], and to delivery of copies thereof, and he hereby undertakes for the custody in the meanwhile thereof.

apportioned rents of other lots until underleases are granted.

And for indemnity.

Acknowledgment, &c. as to documents of title until all underleases are granted (*s*).

[*Add statement as to value*, ante, *p.* 317, *if required.*]

IN WITNESS, &c.

THE [FIRST] SCHEDULE ABOVE REFERRED TO.

[*Description of Lot* 1.]

[THE SECOND SCHEDULE ABOVE REFERRED TO] (*t*).

(*s*) See sect. 9, sub-sect. (13) of the Conveyancing Act, 1881.

(*t*) Add a second or third schedule, if required, setting out the form of the underlease: see *ante*, p. 441, note (*p*).

LXIII. UNDERLEASE TO PURCHASER OF A LEASEHOLD LOT.

LXIII. UNDERLEASE *on* SALE *of* LEASEHOLDS *to the* PURCHASER *of* ONE *of the* LOTS *by the* PURCHASER *of* ANOTHER LOT *who has taken an* ASSIGNMENT *of the* LEASE [*to accompany the last preceding Precedent* (*u*)].

Parties.

THIS INDENTURE (*x*), made the —— day of ——, 19—, BETWEEN [*assignee of lease*], of, &c. (hereinafter called "the assignee"), of the first part; [*vendor*], of, &c. (hereinafter called "the vendor"), of the second part; and [*purchaser taking underlease*], of, &c. (hereinafter called "the purchaser"), of the third part:

Recitals: of lease, &c.;

WHEREAS by an indenture of lease, dated, &c., and made, &c., the messuage and hereditaments hereby demised were, together with other hereditaments, demised unto, &c. [*continue recital of lease, and recite mesne assignments, if any, ut ante*, p. 435];

of agreement for sale of lot to purchaser;

AND WHEREAS the vendor has recently agreed with the purchaser for the sale to him of the said messuage and hereditaments hereinafter described at the apportioned rent of £——;

of agreement as to mode of conveyance;

AND WHEREAS upon the treaty for the said sale it was arranged that the assignee should take such an assignment from the vendor of the whole of the premises comprised in the said indenture of lease as is hereinafter mentioned, and should make and execute to the purchaser an underlease of the said messuage and hereditaments hereinafter described and hereby demised, being part of the said hereditaments comprised in the said indenture of lease and assignment respectively, at the said apportioned rent of £——, and subject to the covenants, conditions, and provisions hereinafter contained;

and custody of documents of common title;

AND it was then also agreed that the assignee should be entitled to retain all documents relating to the common title of the said hereditaments demised by the said indenture of lease, and should give to the purchaser such acknowledgment and

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(*u*) See *ante*, p. 440, note (*n*). Counterparts of the several underleases should be delivered to the assignee purchaser.

(*x*) If the rent reserved by this underlease is treated, as I think it should be, merely as a means for carrying into effect the real transaction as intended between the parties, viz., the sale and assurance for a fixed sum of a portion of the premises comprised in the lease for the whole term, less a nominal reversion of one day, then the stamp on this deed should be *ad valorem* (see *ante*, p. 307) on the amount of the purchase-money without any further stamp; but it would be advisable to have the stamp adjudicated.

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undertaking in relation thereto as are hereinafter contained respectively: AND WHEREAS in pursuance of the said arrangement, by an indenture dated, &c., and made, &c., the whole of the said hereditaments comprised in the said indenture of lease have been assigned by the said vendor unto the assignee for the unexpired residue of the said term of —— years thereby granted, at the rent and subject to the covenants on the part of the lessee and conditions thereby and therein reserved and contained, but upon trust, among other things, to make and execute to the purchaser such underlease as aforesaid, being these presents. NOW THIS INDENTURE WITNESSETH as follows:—

of execution of assignment of lease.

Testatum.

1. In pursuance of the said agreement in this behalf, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the assignee, by the direction of the vendor, hereby demises, and the vendor hereby confirms unto the purchaser, ALL THAT messuage, &c. [*describe parcels*], being part of the said hereditaments comprised in the said indenture of lease, TO HOLD the premises hereby demised unto the purchaser, henceforth for all the unexpired residue of the said term of —— years granted by the said indenture of lease, except the last day thereof; YIELDING AND PAYING therefor unto the assignee, his executors, administrators, and assigns, yearly during the said term hereby granted, and so in proportion for any less time than a year, the rent of £—— without any deduction (except for property tax) by equal quarterly payments on the —— day of ——, &c. (*z*), in every year; the first payment thereof to be made on the —— day of March, 19—.

Demise (*y*).

Habendum: to purchaser for term of —— years less one day.

Reddendum: of apportioned rent.

2. The purchaser hereby, for himself and his assigns, covenants

Covenants by

(*y*) This, being a "demise by way of lease at a rent," is not a "conveyance" within the meaning of sect. 7 of the Conveyancing Act, 1881. It is therefore useless to make the vendor convey or direct as beneficial owner, or to make the assignee purchaser convey as trustee or otherwise: see sub-sect. (5) of that section. But by sub-sect. (6) of the same section the several underlessees will obtain the benefit of the vendor's covenants for title included in the assignment by his being therein expressed to convey as beneficial owner; and the assignee purchaser's covenant for quiet enjoyment will be, so far as the acts of himself and those claiming under him are concerned, a sufficient protection to the underlessees.

As to statutory covenants for title.

(*z*) See *ante*, p. 442, note (*q*).

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with the assignee that he, the purchaser, his executors, administrators, or assigns, will henceforth pay the said rent of £—— hereby reserved at the times and in manner hereinbefore appointed for payment thereof, and will perform and observe all the covenants by the lessee (except the covenant for payment of rent) and conditions contained in the said indenture of lease, so far as the same respectively relate to the said premises hereby demised, and will keep indemnified the assignee, his executors, administrators, and assigns, against all actions, proceedings, costs, damages, expenses, claims and demands for breach, non-performance, or non-observance of the said covenants (except as aforesaid) or any of them.

purchaser of lot for payment of apportioned rent, and performance of covenants, &c. of lease.

Power of entry.

3. PROVIDED ALWAYS, that if the said rent of £—— hereby reserved, or any part thereof, shall remain unpaid for twenty-one days after the same ought to be paid as aforesaid, whether any formal or legal demand thereof shall have been made or not, or if any of the covenants and agreements herein contained on the part of the purchaser, his executors, administrators, and assigns, shall not be by him or them performed and observed, then and in any such case it shall be lawful for the assignee, his executors, administrators, and assigns, into and upon the premises hereby demised, or any part thereof, in the name of the whole, to re-enter and the same to have again and enjoy as if this demise had never been made, but without prejudice to any right of action or remedy of the assignee, his executors, administrators, or assigns, in respect of any previous breach of any covenant on the part of the purchaser, his executors, administrators, and assigns, herein contained.

Covenant for quiet enjoyment.

4. The assignee hereby covenants with the purchaser that he the purchaser, his executors, administrators, and assigns, paying the said rent of £—— hereby reserved in manner aforesaid, and observing and performing all and singular the covenants, conditions, and agreements on his and their part to be performed and observed, shall and may peaceably and quietly hold and enjoy the premises hereby demised during the said term hereby granted, without any interruption or disturbance of or by the assignee, his executors, administrators or assigns, or any persons or person whomsoever claiming under or in trust for him or them.

Acknowledgment, &c. (*a*).

5. The assignee hereby acknowledges the right of the purchaser

(*a*) This acknowledgment, &c. should include the lease and the assignment thereof, and also any mesne assignments thereof by reference to a schedule. If there are no mesne assignments no schedule will be required.

to the production and delivery of copies of the said indenture of lease and the assignment thereof to the assignee [and other the documents mentioned in the schedule hereto], and hereby undertakes for the safe custody thereof. LXIII. UNDERLEASE TO PURCHASER OF A LEASEHOLD LOT.

[*Add statement as to value, if required, see* ante, *p.* 317.]

In witness, &c.

[The Schedule above referred to.]

LXIV. CONVEYANCE *in* Fee *on* Sale *of* Glebe Land *by a* Rector *with the* Consent *of the* Patron *of the* Benefice, *and of the* Ecclesiastical Commissioners(*b*).

THIS INDENTURE (*c*), made the —— day of ——, 19—, Between the Reverend [*rector*], clerk in holy orders, rector of Parties.

(*b*) By the Ecclesiastical Leasing Act, 1842, certain powers of leasing are given to ecclesiastical corporations, aggregate and sole, with the consent of the Ecclesiastical Commissioners. By the Ecclesiastical Leasing Act, 1858 (21 & 22 Vict. c. 57), s. 1, it is enacted that lands authorised to be leased by the Act of 1842, or any part thereof, may be sold by the incumbents or other ecclesiastical corporations to whom they belong with the consent of the Commissioners, three months' notice in writing of such proposed sale having been given to the bishop of the diocese. For the three months' notice required by the 1858 Act, the Glebe Lands Act, 1888, substitutes the notice prescribed by the rules under the latter Act: see (1897) W. N. Rules and Orders, p. 117. By sect. 2 of the 1858 Act, the purchase-money upon any such sale is to be paid to the Commissioners. And by the stat. 29 & 30 Vict. c. 111, s. 3, the three Church Estates Commissioners are to be joint treasurers of the Ecclesiastical Commissioners, and the receipt of any two of such treasurers, or any one of them, and of the accountant or assistant accountant of the Ecclesiastical Commissioners, is to be a good discharge to a purchaser. Glebe land may be sold with the sanction of the Board of Agriculture and Fisheries instead of the Ecclesiastical Commissioners under the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), but the powers of sale under the Ecclesiastical Leasing Acts are kept alive (see sect. 11 of the Glebe Lands Act, 1888), and the Act of 1888 does not apply (see sect. 5) to land subject to a lease for a term of more than twenty-one years or reserving a rent less than two-thirds the full value. As to who, in the case of an infant patron, is the proper person to give the consent to the sale, Sale of glebe.

(*c*) Stamp, *ad valorem:* see *ante*, p. 307.

LXIV. CONVEYANCE OF GLEBE LANDS.

the parish church of ——, in the county of —— (hereinafter called "the rector"), of the first part; [*patron*], of, &c., the present patron of the said rectory (hereinafter called "the patron"), of the second part; the Ecclesiastical Commissioners for England and Wales (hereinafter called "the Commissioners"), of the third part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the fourth part: WHEREAS the lands and hereditaments hereinafter described and hereby conveyed form part of the glebe lands belonging to the said rectory: AND WHEREAS the rector recently agreed with the purchaser for the sale to him, subject to the approval of the Commissioners being obtained, of the said lands and hereditaments in fee simple, free from incumbrances, for the price of £——: AND WHEREAS due notice of the intended sale was on the —— day of ——, 19—, duly given to the Right Reverend [*bishop*] Lord Bishop of ——: AND WHEREAS the patron and the Commissioners, being satisfied that the said intended sale will be to the permanent advantage of the said rectory and the incumbent thereof for the time being, have respectively agreed to concur in these presents in manner and for the purposes hereinafter appearing: NOW THIS INDENTURE WITNESSETH that, for effectuating the said sale, and in consideration of the sum of £—— now paid by the purchaser, by the direction of the Commissioners, to their account at the Bank of England, the payment of which sum of £—— is intended to be acknowledged by a memorandum indorsed on these presents, and signed by [A.] and [B.], as two of the joint treasurers of the Commissioners, and the payment whereof the Commissioners hereby acknowledge, the rector, with the consent hereby testified, as well of the patron, as also of the Commissioners, doth hereby, in pursuance of the power or authority in this behalf given to him by the Ecclesiastical Leasing Acts, and of every other power or authority him hereunto enabling, grant unto the purchaser, ALL THOSE closes or parcels of land, &c. [*describe parcels*], TO HOLD the same unto and to the use of the purchaser, his heirs and assigns, subject to all duties, payments, obligations, and outgoings, ecclesiastical and civil,

Recitals: that lands form part of glebe,

of agreement for sale;

of notice to bishop of intended sale;

of agreement of patron and Commissioners to concur in conveyance.

Testatum.

Habendum.

see *Leigh* v. *Leigh*, [1902] 1 Ch. 400. The Settled Land Acts do not apply to ecclesiastical property: *Bishop of Bath and Wells*, [1899] 2 Ch. 138. As to registered land held by incumbents, see Land Transfer Act, 1897, s. 15. See, further, as to sale of glebe land, Key & Elph. 10th ed. Vol. I. p. 717, note (*c*).

charged upon or payable out of the said premises hereby assured, and to all easements (if any) affecting the same (*d*). [And the rector hereby covenants with the purchaser that he the rector has not at any time heretofore done or knowingly omitted or suffered or been party or privy to anything whereby or by means whereof the hereditaments and premises hereby granted, or any part thereof, are or may be impeached, charged, incumbered, or affected in any manner whatsoever or whereby or by means whereof the rector is in anywise hindered from granting the same premises or any part thereof in manner aforesaid] (*e*). LXIV. CONVEYANCE OF GLEBE LANDS.

[*Add statement as to value*, ante, *p.* 317, *if required.*]

In witness, &c.

LXV. CONVEYANCE *in* Fee *to* Trustees *in* Trust *for* Pious *or* Charitable Purposes *in a* Parish, *under* Direction *of* Rector *and* Churchwardens *for time being* (*f*).

THIS INDENTURE (*g*), made the —— day of ——, 19—, Between [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the other part: Whereas the trustees have agreed to purchase the hereditaments hereinafter described to the intent that the same may hereafter be used for the charitable purposes hereinafter expressed: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said Parties. Recital of agreement for purchase. *Testatum.*

(*d*) See *Re Alms Corn Charity*, [1901] 2 Ch. 750.

(*e*) Incumbents selling glebe lands do not usually enter into covenants for title, and as they are not trustees it seems that they should give express covenants against incumbrances.

(*f*) A conveyance for parochial purposes may, if desired, be made to the churchwardens and overseers of the parish. This conveyance being for valuable consideration seems not to be within the Mortmain Acts, so far as regards the mode of execution and the avoidance of the deed upon the death of the grantor within twelve months after the execution of the conveyance: see 9 Geo. 2, c. 36, s. 2; but it is conceived that it must be enrolled within six calendar months after execution, unless the charitable uses are declared by deed (a proceeding which is not here contemplated), in which event the declaratory deed must be enrolled. As to the form of transfer of land for charitable uses, see L. T. R. 145, and Form 37; and see also L. T. R. 146. Conveyance of land for parochial purposes. Enrolment. Registered land.

(*g*) Stamp, *ad valorem:* see *ante*, p. 307.

LXV. CONVEYANCE IN FEE TO TRUSTEES FOR PAROCHIAL PURPOSES.

Conveyance.

Parcels.

Habendum.

agreement, and in consideration of the sum of £—— now paid by the trustees to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the trustees, ALL, &c. [*describe parcels*], TO HOLD all the premises unto and to the use of the trustees, their heirs and assigns, to the intent that the trustees, their heirs and assigns, shall for ever hereafter stand seised of the premises hereby conveyed, upon trust from time to time to use and dispose thereof, and of every part thereof in such manner as from time to time the rector and churchwardens for the time being of the parish church of ——, in the county of —, shall direct, so as that such directions shall be for the purposes, or some one or more of the purposes following, that is to say: First, in whole or in part, as a residence for the sexton, clerk, organist, curate, or any other officer or person employed in the services of the said parish church, for the time being; or secondly, by way of addition to the churchyard, to the intent that the same may be consecrated for the purposes to which the churchyard of the said parish church is already applicable; or thirdly, in any other manner which may, in the judgment of the said rector and churchwardens for the time being, be useful for any pious or charitable purposes, for the benefit of the inhabitants of the said parish of ——, or of some of them, and approved of by the said rector and churchwardens for the time being; AND IT IS HEREBY DECLARED that the power of appointing a new trustee or new trustees of these presents shall from time to time be exercisable by the rector and churchwardens for the time being of the said parish of ——.

[*Add statement as to value*, ante, *p.* 317, *if required*.]

IN WITNESS, &c.

LXVI. ASSIGNMENT *of the* GOODWILL *and* PLANT *of a* TRADE *or* BUSINESS *in* CONSIDERATION *of a* SUM *of* MONEY *to be* PAID *by* INSTALMENTS, *with* APPROPRIATE COVENANTS (*h*).

LXVI. ASSIGNMENT OF GOODWILL, ETC. OF BUSINESS.

THIS INDENTURE (*i*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the vendor has for several years past carried on a trade and business as a ——, and is at the date hereof engaged in the same trade and business: AND

Parties.

(*h*) This deed may, if desired, be made to include the assignment of any leasehold premises in which the business is carried on. In that case the recital of agreement for sale will mention the leaseholds among the property to be sold, and the assignment of the leaseholds and of any fixed machinery and fixtures will form the first operative part, and will be followed by covenants by the purchaser to pay the rent and observe the covenants, &c. of the lease, and the covenant to indemnify will include actions, proceedings, &c. in respect of non-payment and non-observance of the rent and covenants. Or the leaseholds may be separately assigned by indorsement on the leases, or otherwise: see Precedents VIII. and IX., *ante*, pp. 325, 328.

Leasehold premises.

(*i*) Subject to the following remarks, *ad valorem* stamp duty will be payable on the full amount of the purchase-money (see *ante*, p. 307; and see Finance Act, 1895, s. 12; *Eastbourne Corporation* v. *Att.-Gen.*, [1904] A. C. 155), including the extra 100*l.* payable if the profits in the first year exceed a certain sum (see *post*, p. 456), and, it would seem, on the amount of outstanding debts and liabilities of the business if taken over by the purchaser. And first, as to the goodwill. Goodwill is property within the meaning of the Stamp Act: see *Potter* v. *Commissioners of Inland Revenue*, 10 Exch. 147; and a conveyance of the goodwill requires an *ad valorem* stamp; *ad valorem* duty may, however, be saved by omitting all mention of the goodwill in the recitals and assignment, and reducing the amount of the consideration expressed to be paid accordingly, if the purchaser is content to rely on the vendor's covenants without taking an assignment of the goodwill. A further reduction in the amount of the *ad valorem* duty may be effected by omitting the movable machinery, plant, &c. from the assignment and transferring them by delivery, apportioning the purchase-money accordingly: as to which, see sect. 59 (1) of the Stamp Act, 1891. The delivery of the chattels should be recited so that this deed, so far as they are concerned, would apparently be a "memorandum made for or relating to the sale of goods, wares, or merchandise" within the exemption in the schedule to the Act: see *Horsfall* v. *Hey*, 2 Exch. 778; *Phillips* v. *Gibbons*, 5 W. R. 527.

Stamp.

LXVI. ASSIGNMENT OF GOODWILL, ETC. OF BUSINESS.

Recital: of vendor's trade: contract for sale in consideration of money to be paid by instalments, and secured by bond.

WHEREAS it has been agreed between the vendor and purchaser that in consideration of the sum of 300*l.*, to be paid to him by the purchaser at the time of the execution of these presents, and of the further sum of 250*l.* agreed to be paid to him by the purchaser on the 31st day of December, 19—, together with interest for the same after the rate of 5 per centum per annum in the meantime, to be paid by equal half-yearly payments on the 30th day of June and 31st day of December, 19—, and to be secured by the bond or obligation of the purchaser; AND ALSO of the like sum of 250*l.*, also agreed to be paid to the vendor by the purchaser on the 31st day of December, 19—, with interest for the same after the rate aforesaid in the meantime, to be paid on the 30th day of June and on the 31st day of December in each of the years 19— and 19—, and also to be secured by the said bond or obligation of the purchaser, and also in consideration of such further and contingent payment by the purchaser as is hereinafter mentioned, he, the vendor, shall sell, and the purchaser shall purchase, the goodwill of the trade and business of the vendor; TOGETHER with the machinery, plant, utensils, manufactured and unmanufactured goods, and materials and stock-in-trade used in the said trade or business, and now the property of the vendor, and specified in the first schedule hereto, and the book debts owing to the vendor, the particulars whereof are specified in the second schedule hereto, and the benefit of all contracts and orders which the vendor has entered into for the supply of goods manufactured or sold by him [subject to the purchaser taking over the whole of the debts and liabilities of the said business outstanding on the —— day of —— as shown by the books of the said business]: NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of 300*l.* now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), and also in consideration of the further sums of 250*l.* and 250*l.*, and interest thereon respectively, agreed to be paid to the vendor by the purchaser at the times and in manner hereinbefore mentioned, and to be secured by the bond (*ii*) of the purchaser, bearing even date herewith, as the vendor doth hereby admit; AND ALSO, in consideration of the covenant on the part of the purchaser hereinafter contained, he, the vendor, hereby, as beneficial owner, assigns

Testatum.

In consideration of money paid, and future instalments secured by bond,

(*ii*) For a form of bond, see *ante*, "Bonds," p. 182.

unto the purchaser, ALL THAT the before mentioned trade or business of a —— of him the vendor, and the goodwill thereof, and all benefit and advantage thereof; AND ALSO all the said machinery, plant, utensils, manufactured and unmanufactured goods and materials, stock-in-trade, chattels and effects, and book debts and also all the interest of him the vendor in the said contracts or orders (*k*): TO HAVE, receive, and enjoy all the said premises, unto, and by the purchaser, his executors, administrators, and assigns absolutely: AND the vendor hereby covenants with the purchaser that he, the vendor, his executors and administrators, will, by writing and circulating letters, and by personal introduction and other practicable means, use and exercise his and their best endeavours to introduce the purchaser to, and procure for him the custom of, all the present and late customers and friends who have been in the habit of employing and dealing with him, the vendor, in his said trade or business; AND ALSO will, forthwith or within —— from the date hereof, deliver unto the purchaser a written list of the present and former customers of, and dealers with him, the vendor; AND ALSO that he, the

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vendor assigns trade.

Habendum.

Vendor covenants to introduce purchaser to customers:

to deliver list of customers;

not to carry on trade

(*k*) Add, if required—

"AND ALSO all the benefit of the services of all and every such persons as now are the apprentices of the vendor, for and during such term, respectively, as each such respective apprentice by his indenture of apprenticeship is obliged to serve; the purchaser hereby undertaking for himself, his executors and administrators, during such service, to carry out in all respects the terms of any subsisting deed or deeds of apprenticeship as if the purchaser's name had been inserted therein instead of the name of the vendor."

Apprentices.

The purchaser should, if possible, protect himself by giving notice of this assignment to the persons interested in the contracts and orders, and also to the persons from whom the book debts are owing. If this is done no power of attorney will be necessary: see the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25 (b). Otherwise a power of attorney should be here added, which may be as follows:—

Power of attorney.

"TOGETHER with full power in the name of the vendor, his executors or administrators, or otherwise, to sue for, demand, recover, enforce, and receive payment of, and give effectual receipts or discharges for, all or any of the said book debts and any moneys, damages, costs, charges, and expenses, which may become recoverable or payable in relation to all or any of the said contracts or orders."

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vendor, or his wife or widow (*l*), will not, at any time or period within —— years from the date hereof, or within —— miles of the city of London, either by himself or in partnership with any other person or persons, directly or indirectly (*n*), engage or be concerned, or act as a servant (*o*), in the trade or business of a ——, without the previous written consent of the purchaser; AND THAT if the vendor shall make default in, or act contrary to, such lastly expressed covenant, he, the vendor, his heirs, executors, or administrators, will pay unto the purchaser, his executors, administrators, or assigns, the sum of 1,000*l.* as liquidated and stipulated damages; AND ALSO that he, the vendor, his executors or administrators, will, for the term of one whole year, to be computed from the date hereof, personally assist the purchaser in transacting and carrying on the trade or business, by receiving orders for the purchaser at his (the vendor's) present dwelling-house or residence at ——, or at any other dwelling-house which he may for the time being occupy, and transmitting such orders, as the same shall from time to time be received, unto the purchaser at his place of business, with all practicable dispatch; AND ALSO that the vendor, his executors and administrators, will permit and suffer (*p*) the purchaser, his executors, administrators, or assigns, to use and associate the name of him (the vendor) with the name

within a certain district (*m*);

stipulated damages for default;

during one year to receive orders;

to allow purchaser to use vendor's name.

As to the assignment of contracts, see *Tolhurst* v. *Associated Portland, &c., Ltd.*, [1903] A. C. 414; *Kemp* v. *Baerselman*, [1906] 2 K. B. 604.

(*l*) *Smith* v. *Hancock*, [1894] 2 Ch. 377.

(*m*) In the absence of any agreement to the contrary a vendor selling the goodwill can set up a rival business, but may not solicit the customers of his old business: *Trego* v. *Hunt*, [1896] A. C. 7; *Gillingham* v. *Beddow*, [1900] 2 Ch. 242; *Curl Bros., Ltd.* v. *Webster*, [1904] 1 Ch. 685.

(*n*) *Cory* v. *Harrison*, [1906] A. C. 274.

(*o*) As to the importance of these words, see *Gophir Diamond Co.* v. *Wood*, [1902] 1 Ch. 950.

(*p*) This is a special provision which may involve the vendor in serious liabilities, and is only to be justified by the nature of the business and the restrictions subsequently introduced. As to the right of the purchaser of a business to use the vendor's name, see *Levy* v. *Walker*, 10 Ch. D. 436; *Gray* v. *Smith*, 43 Ch. D. 208; *Townsend* v. *Jarman*, [1900] 2 Ch. 698; *Chatteris* v. *Isaacson*, 57 L. T. 177.

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or names of the purchaser, his executors, administrators, or assigns, in the said trade or business, in all sales of —— by the purchaser, his executors, administrators, or assigns, in order and to the intent to promote the welfare of the purchaser, his executors, administrators, or assigns: But it is hereby expressly agreed and declared that the vendor is not to be under any obligation to attend at the wharf and premises at ——, where he lately carried on his said trade or business, and that the vendor is not to be considered as a partner with the purchaser, his executors, administrators, or assigns, or in any manner to participate with him or them in the fruits or profits of the trade or business hereby assigned, or be subject to any debts, losses, charges, damages, or expenses on account or by reason or means thereof, but is to be indemnified therefrom by the purchaser, his heirs, executors, administrators, or assigns: And also that the purchaser, his heirs, executors, administrators, and assigns, shall, from time to time and at all times hereafter, keep the vendor, his executors and administrators, indemnified from and against all actions, proceedings, costs, charges, demands, and expenses whatsoever, which shall or may be instituted, sustained, or occasioned, for or by reason of the vendor having permitted the purchaser, his executors, administrators, and assigns, to use and associate the name of the vendor with the name or names of the purchaser, his executors, administrators, or assigns, in the conduct and management of the said trade or business as aforesaid, or in any sales of —— which may be made and transacted by the purchaser, or for or by reason of the non-performance or non-execution of the said contracts and orders, or any of them: And also that he, the purchaser, his executors, administrators, or assigns, will not, at any time henceforth, use or associate the name of the vendor in any purchases which may be made by the purchaser, his executors, administrators, or assigns, in consequence of or relative to the said trade or business, but will contract for and purchase the same in the sole name and on the sole account of the purchaser, his executors, administrators, or assigns; And that it shall be lawful for the vendor, or his agents, executors, or administrators, to inquire of persons with whom the purchaser may deal for ——, as to their manner of dealing with, and the nature of their charges to, the purchaser, his executors, administrators, or assigns, and to give to them such notice or notices as may be requisite, in order that the vendor may

Vendor not to attend to business, or be answerable as partner.

Purchaser covenants to indemnify vendor from consequences of permission to use his name;

not to use vendor's name in purchases;

LXVI. ASSIGNMENT OF GOODWILL, ETC. OF BUSINESS.

not be subject to or charged with the contracts, purchases, and dealings of the purchaser, his executors, administrators, and assigns: And further, that in case the net profits which may be derived and realised by the purchaser from the said trade or business shall, within the first year, to be computed from the date hereof, amount to the amount of £——, then the purchaser, his executors or administrators, will, on the —— day of ——, 19—, pay unto the vendor, his executors, administrators, and assigns, the further sum of 100*l.*, free from all deductions, in addition to the prices or considerations hereinbefore expressed to be paid or secured to be paid to the vendor: Provided always that the vendor, his executors or administrators, shall be entitled at all reasonable times during the said period of one year from the date hereof, and for —— days thereafter, to have access to the offices of the said business, and to the books and accounts thereof, for the purpose of ascertaining the amount of the profits so derived and realised from the said business during such period as aforesaid.

if profits exceed a certain sum, to pay additional consideration.

Covenant by purchaser to pay outstanding debt, &c.

[And the purchaser hereby covenants with the vendor that he the purchaser will duly pay and discharge all the debts and liabilities of the said business outstanding on the · · · day of · · · , as shown by the books of the business, and will keep the vendor, his executors and administrators, indemnified against the same and every part thereof respectively, and from all actions, proceedings, costs, charges, demands, and expenses in respect thereof.]

In witness, &c. (*q*).

The First Schedule above referred to.

The Second Schedule above referred to.

Reference to other forms.

(*q*) This precedent is of a comparatively simple nature; various provisions for special circumstances may be framed from the clauses in some of the precedents under the title "Partnership," *post*, Vol. II.

LXVII. ASSIGNMENT *of the* BENEFIT *of an* AGREEMENT *for a* BUILDING LEASE; *and* MATERIALS, PLANT, *&c.* (*r*).

LXVII. ASSIGNMENT OF AGREEMENT FOR LEASE.

THIS INDENTURE (*s*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS, by an agreement dated the —— day of ——, 19—, and made between [A. B.], of the one part, and the vendor, of the other part, in consideration of the rents, covenants, and conditions thereinafter mentioned or contained, the said [A. B.] agreed to let unto the vendor ALL THAT piece or parcel of ground, &c. [*describe parcels*]: AND the vendor

Parties.

Recitals: of agreement for lease:

(*r*) A formal assignment by deed is not necessary; an agreement in writing would be sufficient, which might be shortly expressed by indorsement, thus:—

As to assigning agreement for a lease.

"MEMORANDUM OF AGREEMENT, made this —— day of ——, BETWEEN the within named [*vendor*], of the one part, and [*purchaser*], of, &c., of the other part: WHEREBY, in consideration of 20*l.* this day paid by the said [*purchaser*] to the said [*vendor*], the receipt whereof the said [*vendor*] hereby acknowledges, the said [*vendor*] hereby absolutely sells and transfers to the said [*purchaser*] the benefit of the within written agreement, and of all covenants and stipulations entered into with the said [*vendor*], and of all remedies for enforcing the same, and agrees, at the expense of the said [*purchaser*], to do all necessary acts and things for obtaining from the within mentioned [A. B.] a grant to the said [*purchaser*] of the lease by the said agreement agreed to be granted to the said [*vendor*]: AND the said [*purchaser*] hereby agrees with the said [*vendor*] to perform and observe all the covenants, conditions, and stipulations on the part of the said [*vendor*] contained in the said agreement, and to indemnify him from all actions, proceedings, damages, costs, expenses, claims, and demands, by reason of his, the said [*purchaser's*], non-performance or non-observance thereof.

"AS WITNESS, &c."

Short precedent of indorsed agreement.

(*s*) The stamp duty will be *ad valorem* on the amount of the purchase-money: see *ante*, p. 307; but this duty may be reduced by omission of the building materials, &c. from the conveyance: see *ante*, p. 451, note (*i*).

Stamp.

LXVII. ASSIGNMENT OF AGREEMENT FOR LEASE.

thereby agreed to erect on the said piece or parcel of ground —— good, substantial brick-built dwelling-houses, of an uniform elevation, conformably in every respect to the plans and specifications set forth in the schedule thereto, the said houses to be built in a workmanlike manner, with good and substantial materials of every kind, to the approbation of the surveyor for the time being of the said [A. B.], and to be covered in within —— calendar months from the date of the agreement now in recital; and to insure the said houses in the —— Fire Insurance Office to the full value thereof: AND the said [A. B.] thereby agreed, when the said houses should be covered in, to grant a lease or leases to the vendor of the said piece or parcel of land from the —— day of ——, 19—, for the term of —— years, at the yearly rent or aggregate yearly rent of £——, to be paid on the usual quarter-days, and the first payment thereof to be made on the —— day of ——, 19—, without any deduction whatsoever, except for landlord's property tax, as therein mentioned; AND it was thereby agreed that the said lease should be prepared by the solicitors of the said [A. B.], at the cost of the vendor, and should contain all the customary covenants, provisoes, conditions, and restrictions usually inserted in leases of a similar nature (*t*): AND WHEREAS the said —— dwelling-houses so agreed to be built by the vendor, as aforesaid, have been partly erected by him, but are not yet covered in: AND WHEREAS the purchaser has agreed with the vendor for the purchase of the benefit of the said agreement [and the materials, utensils, and plant hereinafter described and hereby assigned]: NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), he the vendor hereby, as beneficial owner, assigns unto the purchaser, his executors, administrators, and assigns, ALL THAT the hereinbefore recited agreement of the —— day of ——, and all benefit thereof: [AND ALSO all materials, utensils, and plant, the property of the vendor, and now being upon or in the said piece or parcel of land so agreed to be leased as aforesaid,

of commencement of houses;

of agreement for purchase.

Testatum.

(*t*) As to what are "usual covenants" in leases, see *Re Lander and Bagley's Contract*, [1892] 3 Ch. 41; Foa, Landlord and Tenant, 5th ed. 376.

and used or intended to be used for the purposes of or in relation to the erection of the said dwelling-houses], To HOLD the said agreement [and all other the premises hereby assigned] unto the purchaser absolutely; subject nevertheless to the several covenants and stipulations in the said agreement contained, and on the part of the vendor, his executors or administrators, to be performed, or such of the said covenants, agreements, and stipulations, as are now unperformed or capable of taking effect (*u*): AND the purchaser hereby covenants with the vendor that he the purchaser, his executors, administrators, or assigns, will henceforth perform and observe all the covenants and stipulations in the hereinbefore recited agreement expressed, and on the part of the vendor, his executors, administrators, and assigns, to be performed and observed, or such of the said covenants and stipulations as now remain subsisting, unperformed, or capable of taking effect; AND will at all times hereafter effectually keep indemnified the vendor, his heirs, executors, and administrators, of, from, and against the same covenants and stipulations, and all actions, proceedings, costs, charges, damages, expenses, claims, and demands whatsoever, for

LXVII. ASSIGNMENT OF AGREEMENT FOR LEASE.

Habendum.

Covenant by the purchaser to perform the stipulations of the contract,

and indemnify the vendor in respect thereof.

(*u*) If thought advisable, a power of attorney may be here inserted as follows:—

"AND, for the consideration aforesaid, the vendor hereby irrevocably appoints the purchaser, his executors and administrators, the true and lawful attorney and attorneys of him, the vendor, for him and in his name, or otherwise, but at the costs and for the benefit of the purchaser, his executors or administrators, to demand, recover, receive, and give effectual receipts or discharges for any moneys which are or may become payable, and to bring or institute any action or other proceeding, and to give any notices under or by virtue of the said agreement, and to execute and do all such deeds, instruments, and acts as shall be necessary or proper, to enable the purchaser, his executors or administrators, to obtain the full benefit of the said agreement and of the lease or leases to be granted thereunder, and generally to act in the premises, as by the purchaser, his executors or administrators, shall be deemed expedient; AND for all or any of the purposes aforesaid to appoint a substitute or substitutes, and such substitution from time to time at pleasure to revoke."

Power of attorney to sue on agreement.

LXVII. ASSIGNMENT OF AGREEMENT FOR LEASE.

or in respect of the same covenants, stipulations, and agreements, or otherwise in relation thereto (*x*).

[*Add statement as to value, if required*, ante, *p.* 317.]

In witness, &c.

LXVIII. ASSIGNMENT *of a* Bond Debt (*y*).

THIS INDENTURE (*z*), made the —— day of ——,

Parties. Between [*vendor*], of, &c., of the one part; and [*purchaser*], of, &c., of the other part:

Recitals: of bond; Whereas by a bond or obligation dated the —— day of —— last, under the hand and seal of [*obligor*], of, &c., the said [*obligor*] became bound unto the said [*vendor*], in the sum of £——, conditioned for the payment unto the said [*vendor*], his executors or administrators, of the sum of £——, and interest thereon, at the rate of —— per centum per annum, from the day of the date thereof, on the —— day of —— then next ensuing;

of debt being due; And whereas the said principal sum of £—— remains owing to the said [*vendor*], together with interest thereon from the —— day of ——;

of contract for purchase. And whereas the said [*purchaser*] has agreed with the said [*vendor*] for the purchase of the said bond debt, at the price of £——.

Testatum. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the said [*vendor*] by the said [*purchaser*] (the receipt whereof is hereby acknowledged), he, the said [*vendor*], hereby, as beneficial owner, assigns

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(*x*) Add, if a power of attorney is given—

And also in respect of the power. "And also for or in respect of the power or authority hereinbefore given to the purchaser, his executors or administrators, or any actions or other proceedings, which may be brought or instituted by the purchaser, his executors or administrators, or his or their substitute or substitutes, by virtue thereof, or otherwise in relation thereto."

(*y*) Notice of this assignment must be given to the debtor. If this is done, no power of attorney to use the name of the assignor will be necessary: see the Judicature Act, 1873, s. 25 (6).

(*z*) Stamp, *ad valorem* at the rate of 6*d.* for every 100*l.* or part of 100*l.* of the amount transferred (including interest in arrear): see Stamp Act, 1891, sched. *tit.* "Mortgage," &c. (4); and see Vol. II. p. 140, note (*m*).

unto the said [*purchaser*], ALL THAT the hereinbefore recited bond or obligation, and all interest now due, or hereafter to become due for the same, and the full benefit thereof, and of all securities for the said debt, To HOLD and receive the premises hereby assigned unto the said [*purchaser*] absolutely. LXVIII. ASSIGNMENT OF A BOND DEBT. *Habendum.*

IN WITNESS, &c.

LXIX. ASSIGNMENT *of a* POLICY *of* LIFE ASSURANCE *by a* VENDOR *to a* PURCHASER (*a*).

THIS INDENTURE (*b*), made the —— day of ——, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WITNESSETH that, in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL THAT policy of assurance effected in the —— Assurance Society in the name of the vendor, and payable on the vendor's death, dated the —— day of ——, and numbered —, for the sum of £——, and under an annual premium of £——; AND the said sum of £—— thereby assured, and all sums of money, bonuses, and benefits which may become payable or receivable under or by virtue of the same policy, To HOLD the same unto the purchaser absolutely; AND the vendor hereby covenants with the purchaser that he the vendor will not hereafter do or knowingly omit or suffer any act or thing (except so far as respects the payment of the future premiums to become due in respect of the said policy), by means whereof the said policy of assurance shall become void or voidable, or whereby the purchaser, his executors, administrators, or assigns, shall be defeated or prejudiced in receiving the said sum of £—— assured thereby, or any such money, bonuses, or benefits as aforesaid; AND that, in case he the vendor shall hereafter go beyond the seas, or do, omit, or suffer any other act or thing by reason whereof the premium payable in respect of the said policy shall be increased beyond the said annual sum of £——, then he

Parties. *Testatum.* Assignment. Policy. *Habendum.* Covenants by vendor: not to occasion any forfeiture; to pay any additional premium for going abroad, &c.

(*a*) Notice in writing of this assignment must be given to the assurance office, at their principal place of business: see Policies of Assurance Act, 1867, s. 3.

(*b*) Stamp, *ad valorem* on the purchase-money: see *ante*, p. 307. Under sect. 118 of the Stamp Act, 1891, no payment can be made to any person claiming under the assignment until it is duly stamped.

LXIX. ASSIGNMENT OF POLICY OF LIFE ASSURANCE.

the vendor, his executors or administrators, will pay such additional premium, and effectually indemnify the purchaser, his executors, administrators, and assigns, from all loss or damage in respect thereof (*c*).

In witness, &c.

LXX. CONVEYANCE *in* Fee *to a* County Territorial Association *under the Territorial and Reserve Forces Act*, 1907 (*d*).

THIS INDENTURE (*e*), made the —— day of ——, Between (*vendor*), of, &c. (hereinafter called "the vendor"), of the one

As to vendor's covenant not to leave the kingdom.

(*c*) The propriety of this covenant depends on the nature of the agreement between the parties. If the vendor does not go the length of contracting to pay any additional premium which his departure from England might occasion (which is certainly not of course), he ought at least to stipulate not to leave the country without notice, and without affording the purchaser an opportunity of paying the additional premium. The covenant would then be varied as follows:—

"And that he the vendor will not at any time hereafter go or travel to any place or places out of Great Britain, or do, omit, or suffer any act or thing whereby any additional or increased premium or payment may become payable in respect of the said policy, or change his place of residence, without giving previous notice or intimation in writing of his intention so to do, to the purchaser, his executors, administrators, or assigns, so as to afford him or them an opportunity of paying any additional premium or premiums, which according to the terms of such policy would become payable in that event; And that the executors or administrators of him, the vendor, will, within —— days after his death, give notice or information in writing thereof to the purchaser, his executors, administrators, or assigns, by letter sent through the post to his or their usual or last known place of residence in England."

Sometimes, by the terms of the policy, an additional premium becomes payable on entering into active military or naval service. The draughtsman will, of course, in every case frame the stipulation with reference to the particular terms of the policy in question.

(*d*) The County Associations are constituted under the provisions of

(*e*) Stamp, *ad valorem:* see *ante*, p. 307.

LXX. CONVEYANCE TO COUNTY TERRITORIAL ASSOCIATION.

part, and the Territorial Force Association for the county of —— (hereinafter called "the association"), of the other part.

WHEREAS the vendor is seised of the hereditaments hereby assured for an estate in fee simple in possession free from incumbrances.

AND WHEREAS the association is by virtue of the Military Lands Acts, 1892 to 1903, and the Territorial and Reserve Forces Act, 1907, and the regulations made in pursuance thereof, authorised to acquire and hold land subject to the consent of the Army Council.

AND WHEREAS the association require the hereditaments hereby assured for military purposes, and have obtained the consent of the Army Council to their acquiring the same.

AND WHEREAS the vendor has agreed with the association for the sale to them of the said hereditaments and the fee simple thereof in possession free from incumbrances for the sum of £——.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the association to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby as beneficial owner grants unto the association ALL THAT [*describe parcels*], TO HOLD unto and to the use of the association and their assigns in fee simple.

[*Add acknowledgment and undertaking as to deeds*, ante, p. 318; *and statement as to value*, ante, p. 317, *if required*.]

IN WITNESS, &c.

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the Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), s. 1 (2), in accordance with schemes made by the Army Council; such schemes provide for the incorporation of the association by an appropriate name with power to hold land for the purposes of the Act without licence in mortmain: sect. 1 (2) (b); see also 1910 Regulations next referred to, App. 2, s. 2. The acquisition of land by an association is regulated by the Regulations for the Territorial Force and County Associations, 1910, App. 14 and App. 15. The consent of the Army Council to a purchase or sale by an association is required. The Regulations adapt the provisions of the Military Lands Acts, 1892—1903. The 1892 Act incorporates the Lands Clauses Act with certain exceptions. As to transfer of land to a corporation, see L. T. R. 144. As to registration, L. T. R. 256.

Registered land

LXXI. ENFRANCHISEMENT BY LORD ABSOLUTELY ENTITLED.

LXXI. DEED OF ENFRANCHISEMENT *to a* COPYHOLD TENANT *by a* LORD *of a* MANOR SEISED *in* FEE. RE-GRANT *of* COMMONABLE RIGHTS (*f*).

Parties.

THIS INDENTURE (*g*), made the —— day of ——, BETWEEN [*lord*], of, &c., lord of the manor of ——, in the county of ——, of the one part, and [*copyholder*], of, &c., a copyholder of the same manor, of the other part: WITNESSETH that, in consideration of the sum of £—— to the said [*lord*] now paid by the said [*copyholder*] (the receipt whereof the said [*lord*] hereby acknowledges), the said [*lord*], as beneficial owner, hereby enfranchises, releases, and conveys unto the said [*copyholder*], his heirs and assigns, ALL THAT [*describe parcels*]. [Together with all mines and minerals in and under the same premises, and together with all such commonage and right to common, of what nature soever, in, over, or upon all or any of the wastes, commons, and commonable lands belonging to the said manor as he the said [*copyholder*] held and enjoyed in respect of the hereditaments and premises hereinbefore described, and hereby granted and enfranchised, or any of them, immediately before the execution of these presents, and the freehold and inheritance thereof] [and all franchises, rights and royalties, and ancient fisheries and rights of fishing. AND ALSO all such liberties of chase and free warren and killing of game (if any) as have been heretofore anciently enjoyed by the lords of the said manor, or to which they are entitled by law, grant

Re-grant of rights of common.

(*f*) See Copyhold Act, 1894, Part I. of which (sects. 1—13) deals with compulsory enfranchisement, and Part II. (sects. 14—20) deals with voluntary enfranchisement. The effects of enfranchisement under the Act are stated in Part III. (sects. 21—24). On an enfranchisement under the S. L. Act, 1882, s. 3 (ii.), the mines and minerals pass unless they are excepted, but under the Copyhold Acts they do not pass unless they are expressly mentioned. As to enfranchisements under the powers of the Settled Land Acts, see, where the manor is settled, S. L. Act, 1882, s. 3 (ii.) (an "enfranchisement" is a sale within this section) and s. 55 (2); and where the copyhold is settled, see the same Act, sects. 18, 20 (i.) and 21 (v.). An enfranchisement deed is a conveyance on sale: L. T. Act, 1897, s. 20 (2); the copyholder must therefore, in a compulsory district, be registered as proprietor. Forms of deeds of enfranchisement with the consent of the Board of Agriculture and Fisheries are issued by the Board at their office, 3, St. James's Square, London, S.W. See, further, as to enfranchisements, Key & Elph. 10th ed. Vol. I. pp. 646, 647.

(*g*) Stamp, as on a conveyance on sale: see "Conveyances," Preliminary Note, *ante*, p. 307.

LXXI. ENFRANCHISEMENT BY LORD ABSOLUTELY ENTITLED.

or custom] (*h*): To HOLD the said premises hereby conveyed unto and to the use of the said [*copyholder*], his heirs and assigns, discharged from all rents, fines, duties, services, and other incidents of tenure (*i*).

IN WITNESS, &c.

(*h*) If so agreed, the conveyance may be made with the following reservation:—

"Except and reserving to the said [*lord*] and his successors in title, lords of the said manor, all mines, minerals, quarries of stone, slate, ironstone and other ores, mines and minerals in and under the said lands and premises hereby enfranchised, or any part thereof, with all such powers of getting and working the same as are hereinafter granted. And all such liberties of chase and free warren and killing of game (if any) as have been heretofore anciently enjoyed by the lords of the said manor, or to which they are entitled by law, grant or custom."

(*i*) If the enfranchisement is made with reservations, add,

"other than such as are herein excepted and reserved"

and if the minerals are reserved, add the following operative part:—

"AND THIS INDENTURE ALSO WITNESSETH that, in consideration of the premises, the said [*copyholder*] hereby, as beneficial owner, grants unto the said [*lord*], and his successors in title, lords of the said manor, full liberty and power at all times to enter upon the said lands or any part thereof to search for, dig, raise and make merchantable, and carry away the said mines and minerals, and to make, sink, maintain and use all such pits, shafts, levels, drains, watercourses and reservoirs, and construct, maintain and use all such spoilbanks, railroads, tramroads and other roads, bridges, works, engines, machinery and conveniences, and do all such things in, under, upon or over the said lands or any part thereof as may be necessary or convenient for all or any of the purposes aforesaid, making from time to time reasonable compensation to the said [*copyholder*], his heirs and assigns, and his and their lessees and tenants for all damage thereby done to the said lands or any buildings thereon."

LXXII. OF AN ADVOWSON.

LXXII. CONVEYANCE *of an* ADVOWSON. VARIATIONS *for* CONVEYANCE *of a* NEXT PRESENTATION.

THIS INDENTURE (*k*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part.

WHEREAS the vendor is seised of the advowson and perpetual right of presentation of and to the rectory and parish church of ——, in the county of ——, for an estate in fee simple in possession.

AND WHEREAS more than twelve months have elapsed since the last institution and admission to the said rectory.

AND WHEREAS the vendor has agreed with the purchaser to sell to him the said advowson for the sum of £——.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser ALL THAT the advowson and perpetual right of presentation (*l*) of and to the rectory of the parish church of ——, in the county of ——, and the rights and appurtenances thereunto belonging, TO HOLD the same unto and to the use of the purchaser, his heirs and assigns (*l*).

IN WITNESS, &c.

(*k*) Stamp, *ad valorem*: see *ante*, p. 307. An advowson being an incorporeal hereditament is not "land" within the Finance (1909-10) Act, 1910, Part I. (see sect. 41), and therefore increment value duty is not payable on a sale. As to estate and succession duty on the value of an advowson, see *A.-G.* v. *Peek*, [1913] 2 K. B. 487

(*l*) In the case of a sale of the next presentation, the conveyance will recite that the vendor is entitled to the next presentation to the rectory and parish church of, &c., and the parcels will be as follows:—"All that the right of presentation to the rectory of the parish church of ——, in the county of ——, for the next avoidance of the same only."

As to sales of advowsons, see the Benefices Act, 1898, which provides, by sect. 1 (1), that a transfer of a right of patronage of a benefice shall not be valid unless (a) it is registered in the prescribed manner in the registry of the diocese within one month from the date of the transfer or such extended time as the bishop allows; (b) it transfers the whole interest of the transferor (except as thereinafter provided) and more than twelve months have elapsed since the last institution or admission to the

DECLARATIONS (STATUTORY) (*a*).

PRECEDENTS.

I. STATUTORY DECLARATION *as to* IDENTITY, *and uninterrupted* POSSESSION *of* PARCELS (*aa*).

Declaration.

I (*b*), [*declarant*], of ——, in the county of — —, a partner in the firm of —— & Co., surveyors and land agents, of, &c., do solemnly and sincerely declare as follows:—

1. I am —— years of age, and for the last —— years have resided in the neighbourhood of ——, and for —— years and upwards have [acted as agent to and] been intimately acquainted with the X. estate situate in the several parishes of —— and ——, in the county of —— aforesaid, a portion whereof comprising several pieces or parcels of land, &c., delineated in the plan now shown to me marked A., and therein coloured pink, has lately been agreed to be sold to [*purchaser*], of, &c., by [*vendor*], of, &c.

2. The said X. estate was by an indenture dated, &c., conveyed to the said [*vendor*], and is in the said indenture described by

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benefice; but (sub-sect. (6)) the expression "transfer" shall not include (a) a transmission on marriage, death, or bankruptcy, or otherwise by operation of law, nor (b) a transfer on the appointment of a new trustee where no beneficial interest passes; and (sub-sect. (7)) nothing in this section shall prevent the reservation or limitation in a family settlement of a life interest to the settlor, or in a mortgage the reservation of a right of redemption. An advowson *may* be registered (L. T. Act, 1875, s. 82; L. T. R. 71), but being an incorporeal hereditament, registration is not compulsory: L. T. Act, 1897, s. 24 (1).

(*a*) See Statutory Declarations Act, 1835; Interpretation Act, 1889, s. 21 (meaning of "Statutory Declaration"); and Short Titles Act, 1896, First Schedule.

(*aa*) Where the evidence as to identity is insufficient, it is usual to stipulate in the contract or conditions of sale that the purchaser shall accept the statutory declaration of some person acquainted with the facts, that the property has been held by its present description for a number of years, and explaining any apparent discrepancies in the description of the parcels in the abstract or other documents. And recourse is often had to such declarations as evidence on other matters on which the title depends, where it is impossible or difficult to obtain evidence of a more strict character. See *sub tit.* "Conditions of Sale," *ante*, p. 243.

(*b*) Stamp, 2*s.* 6*d.*: see first schedule to the Stamp Act, 1891 (Affidavit and Statutory Declaration), amended by Finance Act, 1907, s. 6. As to stamp where more than one declarant join in one declaration, see *Reversionary Interest Society* v. *I. R. Commrs.*, 22 T. L. R. 740.

I. AS TO IDENTITY.

reference to a schedule, the particulars of which said schedule I have carefully read before making this declaration.

3. The said pieces or parcels of land delineated in the said plan marked A., and therein coloured pink, are described in the schedule to the said indenture as follows:—[*description*].

4. I have no doubt that the said plan and schedule correctly describe and show the said pieces of land so contracted to be sold and the said X. estate respectively, and I say that the plots numbered — and —, and coloured pink on the said plan, now form, and always, to the best of my knowledge, recollection, and belief, have formed part of the said X. estate, and have always been cultivated and enjoyed as part of the same estate.

5. During the time I have been acquainted with the said X. estate, the said pieces or parcels of land so contracted to be sold have been in the possession of A. B., C. D., and E. F. successively, of the said A. B. from the year —— to the year ——, of the said C. D. from the year —— to the year ——, and of the said E. F. from the year —— to the year ——.

AND I make this declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

II. STATUTORY DECLARATION *as to* PEDIGREE *and* OTHER MATTERS *affecting* LAND CONTRACTED *to be* SOLD (*c*).

Declaration.

I (*d*) [*declarant*], of [X.], in the county of [Y.], hereby solemnly and sincerely declare as follows:—

1. I was, in the year 18—, married to [A. B.], late of [X.], aforesaid, and I am the person of the name mentioned in the certificate of marriage now produced to me and marked with

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(*c*) In matters of descent, a statutory declaration is not generally admissible in Court unless the declarant is dead and the declaration is made against his interest, or the declarant is a member of the family. It is desirable, therefore, that the declaration should show the relationship of the declarant to the family. The Births and Deaths Registration Act (6 & 7 Will. 4, c. 86) came into operation on July 1st, 1837. See also the Act of 1874, s. 38; the Non-Parochial Registers Act, 1840; and *Re Woodward*, [1913] 1 Ch. 392.

(*d*) Stamp, 2*s*. 6*d*.

the letter A (*e*). The said [A. B.] died on the —— day of ——, 18—.

2. I was well acquainted with [C. B.] and [D. B.], his wife, who many years since resided at [Z.], in the county of [Y.] aforesaid; AND, as I am informed and believe, they were married in the parish church of [W.], in the city of [V.], on the —— day of ——, 18—, the said [C. B.] and [D. B.] are the persons respectively mentioned in the certificate of marriage now produced to me and marked with the letter B.

3. The said [C. B.] died and was buried at [Z.], aforesaid, in or about the year 18—, leaving the said [D. B.], his widow, and three children, him surviving, namely two sons [E. B.] and [F. B.], and one daughter [G.], the wife of [H. C.].

4. I well knew the said [E. B.], and I was present at his marriage, at [U.], in the year 18—, with [I. D.], who died shortly after the said marriage without issue; AND I am informed and believe that the said [E. B.] never married again, but died in the year 18—, without issue. The said [E. B.] is the person of that name mentioned in the three several certificates of baptism, marriage, and death now respectively produced to me and marked with the letters C, D, and E respectively.

5. I well knew the said [F. B.], and I am informed and believe that he married [J. E.] at [T.], in the year 18—; that he had a daughter [K.], who was his only child, and who died in his lifetime, and that he died on the —— day of ——, 18—. He is the person of that name mentioned in the three several certificates of birth, marriage, and death respectively now produced to me and marked with the letters F, G, and H respectively. The said [K. B.] is the person of that name mentioned in the two several certificates of birth and death respectively now produced to me and marked with the letters I and K respectively. The said [J. B.], widow of the said [F. B.], is still living, and resides at [S.].

6. I have been informed and believe that the said [G. C.], formerly [G. B.], married the said [H. C.] at [S.], in the year 18—, and that they had two children only, namely, one son [L. C.], and one daughter [M. C.]. The said [G. C.] died on

(*e*) Where a declaration is made by a wife as to her husband's family, her relationship must be proved.

II. AS TO PEDIGREE, ETC.

the —— day of ——, 19—, and is the person of that name mentioned in the three certificates of birth, marriage, and death respectively now produced to me and marked with the letters L, M, and N respectively.

7. I have been informed and believe that the said [L. C.] sailed in the month of January, 18—, in the ship ——, bound from Bristol to New Zealand: that the said ship has never since been heard of, and that no letters or tidings have since been received from or with regard to him by any of his family, and I verily believe him to be dead, and that he died a bachelor and intestate. The said [L. C.] is the person of that name mentioned in the certificate of birth now produced to me and marked with the letter O.

8. The said [M. C.] attained the age of twenty-one years on the —— day of ——, 19—, and has never been married, and I verily believe that the said [M. C.] is the niece and heiress-at-law of the said [E. B.]. She is the person of that name mentioned in the certificate of birth now produced to me, marked with the letter P.

And I make this declaration, &c.

— — —

STATUTORY DECLARATION *to accompany* Power *of* Attorney *for use* Abroad, *see* Attorney, Powers *of*, *Precedent XIV.*, *p.* 165.

DIRECTIONS AND CONSENTS.

PRECEDENTS.

I. DIRECTION *or* Consent *as to* Investment *of* Trust Funds.

TO [*trustee*], of, &c., and [*trustee*], of, &c., the trustees of an indenture of settlement, dated, &c., and made on the occasion of our marriage.

We, the undersigned, hereby direct you to invest [*or*, consent to your investing] the sum of £——, now in your hands, as trustees of the said settlement, upon mortgage of freehold hereditaments,

belonging to [*intended mortgagor*], and situate at ——, in the county of ——, and containing by admeasurement —— acres or thereabouts [*or*, in the purchase of £—— £2½ per cent. Consolidated Stock].

As witness, &c.

[*Signatures of Husband and Wife.*]

II. DIRECTION *by* Tenant *for* Life *as to* Investment *of* Capital Moneys (*ee*).

TO [*trustee*], of, &c., and [*trustee*], of, &c., the trustees of the settlement created by the will, dated, &c., of [*testator*], late of, &c., who died on the —— day of ——.

I [*tenant for life*], of, &c., by virtue of the powers vested in me by the Settled Land Acts, 1882 to 1890, as tenant for life, in possession of the —— estate, devised and settled by the said will, do hereby direct you to invest the sum of £—— [*or*, capital moneys], now in your hands, as such trustees as aforesaid, in the purchase of, &c. [*state proposed investment, and if of land, add* "and in the payment of Messrs. —— bill of costs in respect of the said purchase, and of the fees of Mr. —— for his report and valuation of the property"].

As witness, &c.

[*Signature of Tenant for Life.*]

III. DIRECTION *to* Vary Investment.

TO [*trustee*], of, &c., and [*trustee*], of, &c., the trustees of an indenture of settlement, dated, &c., being the settlement made on the occasion of my marriage with my late husband [*husband*], of, &c., deceased.

I [*widow*], of, &c., widow of the said [*husband*], who died on the —— day of ——, 19—, hereby request and direct you to sell out the sum of £—— £2½ per cent. Consolidated Stock, now standing in your names as trustees of the said settlement, and to invest the proceeds of such sale (after paying thereout the costs of such sales and re-investment), in the purchase of, &c. [*state proposed investment*]; [And if by reason of the market, or any other circumstances, it shall appear to you inexpedient to invest the said

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(*ee*) See S. L. Act, 1882, s. 22 (2).

III. TO VARY INVESTMENTS.

proceeds of sale as hereinbefore mentioned, then I request and direct you to invest the said proceeds of sale in the purchase of —— or in any other one or more of such stocks, funds, shares, or securities as are authorised by the said settlement for the investment of the trust funds for the time being, subject to the trusts and provisions thereof.]

[*Signature of Widow.*]

As witness, &c.

IV. CONSENT *by* Trustees *to* Tenant *for* Life Cutting *and* Selling Timber (*f*).

TO [*tenant for life*].

We, as trustees of the will of ——, deceased [*or,* "under an indenture of settlement, dated, &c."], do hereby give our consent for you, as tenant for life of the said will [*or,* "settlement"], to cut and sell such of the timber as is ripe and fit for cutting on such portions of ..... / pieces or parcels of ..... lands on the —— estate as are described in the schedule hereto. [Provided that three-fourths of the net proceeds of such sale are to be paid to us to be applied as capital money.]

Dated, &c.

[*Short schedule of parcels.*]

[*Signature of Trustees.*]

V. DIRECTION *to* Trustees *to* Sell Land.

TO [*trustee*], of, &c., and [*trustee*], of, &c., the trustees of an indenture of settlement, dated, &c., and made, &c.

I [*directing party*], direct you to sell, either by auction or private contract, as a whole or in parts, the freehold property known as the —— estate, being [part of] the property now subject to the uses or trusts of the said settlement [and I undertake to concur in any assurance to a purchaser of the whole or any part thereof].

[*Signature of directing party.*]

(*f*) See Settled Land Act, 1882, s. 35 (1), (2). As to what is "timber," see *Honywood* v. *Honywood,* 18 Eq. pp. 306, 308; *Dashwood* v. *Magniac,* [1891] 3 Ch. 306; *Re Trevor-Batye,* [1912] 2 Ch. 339. The proviso at the end of this form is inserted to draw the tenant for life's attention to sub-sect. (2).

VI. CONSENT *of* Tenant *for* Life *to* Alteration *of* Investment *of* Capital Moneys *by* Calling *in a* Mortgage (*ff*).

TO [*trustee*], of ——, and [*trustee*], of ——, the trustees of a settlement created by an indenture dated, &c., and made between, &c.

I [*tenant for life*], of, &c., by virtue of the powers vested in me by the Settled Land Acts, 1882 to 1890, as tenant for life in possession of the lands and hereditaments comprised in and settled by the said indenture of settlement, hereby consent to the following alteration of the investment of part of the capital moneys arising under the said Acts, and subject to the limitations and trusts of the same indenture, that is to say: that you shall and may, as soon as conveniently may be, call in the sum of £—— (part of such capital moneys as aforesaid), now secured upon mortgage of certain lands and hereditaments at ——, in the county of ——, belonging to Mr. ——, and invest the same (after paying all costs of such calling in and re-investment), in the purchase of, &c. [*state proposed investment*].

As witness, &c.

[*Signature of Tenant for Life.*]

VII. DIRECTION *by* Tenant *for* Life *for* Purchase *of* Lands *to be* Settled, *and* Application *of* Capital Moneys *in* Payment *of* Purchase-Money (*g*).

TO [*trustee*], of, &c., and [*trustee*], of, &c., the trustees of the settlement created by, &c.

Whereas it has been recently agreed between [*vendor*], of, &c., and yourselves, at my request (as I hereby acknowledge), that you shall purchase from him, in fee simple, and free from incumbrances, all and singular the farm-house, farm cottages, closes of land and hereditaments situate, &c., and known as the ——

(*ff*) The consent of the tenant for life is required to any alterations of investments by the trustees: see S. L. Act, 1882, s. 22 (4).

(*g*) The direction of a tenant for life for the purchase of lands to be settled and for the application of capital moneys in payment of the purchase-money, is usually testified by his execution of the conveyances; but circumstances may sometimes render this course inconvenient, in which case a separate instrument will be required.

VII. DIRECTION BY TENANT FOR LIFE FOR PURCHASE OF LANDS, ETC.

Farm, and containing by admeasurement —— acres or thereabouts, for the sum of £——; And whereas the title of the said [*vendor*] has been investigated and found to be satisfactory: Now I [*tenant for life*], of, &c., do hereby, by virtue of the powers vested in me by the Settled Land Act, 1882, as tenant for life of the lands comprised in and settled by the said indenture of settlement, direct and authorise you to complete the purchase of the said premises, and to accept a proper conveyance thereof from the said [*vendor*] and all other necessary parties (if any); And further to sell out a competent part of the sum of £—— $2\frac{1}{2}l.$ per cent. Consolidated Stock, now standing in your names as trustees of the said settlement, and representing capital moneys arising under the said Act, and to apply the net proceeds of such sale in payment of the said purchase-money or sum of £—— to the said [*vendor*] or other the person or persons entitled thereto, upon the execution by him or them on the —— day of —— next, or such later day as may be appointed for the completion of the said purchase, of such conveyance of the premises as aforesaid, and in payment of the costs and expenses of and incident to such purchase.

As witness, &c.

[*Signature of Tenant for Life.*]

VIII. CONSENT *by* Trustees *of a* Settlement *to* Sale *by* Tenant *for* Life *of the* Principal Mansion House, *&c.* (*h*).

TO [*tenant for life*], of, &c., the tenant for life, in possession of the —— Estate, under a settlement created by an indenture of settlement, dated, &c., and made between [*parties*].

We, the undersigned, the trustees of the above mentioned settlement, do hereby, pursuant to the Settled Land Acts, 1882 to 1890, consent to your selling [*or,* leasing for a term not exceeding —— years] the mansion house called —— Hall, in the county of ——, and the demesne and other lands hitherto held therewith,

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(*h*) See Settled Land Act, 1890, s. 10; *Gilbey* v. *Rush,* [1906] 1 Ch. 11; and *In re Wythes' Settled Estates,* [1908] 1 Ch. 593, as to consent of trustees and as to what is a principal mansion house; and Forms IV., VI. and VII. in Appendix to Rules of Court under S. L. Act, 1882.

and particularly described in the schedule hereunder written, or any part or parts thereof in such manner and subject to such conditions, provisions and terms as you may think fit and proper, and we undertake to sign and execute such deeds and documents as may be deemed necessary for effectuating such sale [*lease*] and testifying our consent thereto.

As witness, &c.

[*Signature of Trustees.*]

Schedule.

IX. CONSENT *under sect.* 50 (3) *of the Settled Land Act*, 1882, *of a* Mortgagee *of* Life Estate *to a* Sale *by* Tenant *for* Life.

TO [*tenant for life*], of ——, the tenant for life [*or*, limited owner] of the —— estates under the will of [*testator*], deceased [*or*, an indenture of settlement, dated, &c., and made, &c.].

I [*mortgagee*], of, &c., as mortgagee under an indenture of mortgage dated, &c., and made, &c., of the life estate vested in you by virtue of the above mentioned will [*settlement*] in amongst other hereditaments the hereditaments mentioned in the schedule hereto, do hereby consent to your selling under the powers vested in you by the Settled Land Acts, 1882 to 1890, the said freehold hereditaments and the inheritance thereof for the sum of £—— to be paid to the trustees of the said will [*indenture of settlement*]. And I hereby agree upon such payment being made to such trustees as aforesaid at your expense to execute and do all such acts and assurances as shall be necessary for releasing the said hereditaments from the principal moneys and interest secured by the above mentioned mortgage, and from all claims and demands thereunder, but without prejudice to the charge to which I am or shall be entitled as such mortgagee as aforesaid on your life interest in the proceeds of such sale as aforesaid, and the investments and income thereof (*i*).

Dated, &c.

Schedule.

Witness. [*Signature.*]

(*i*) The consent of the mortgagee enables the tenant for life to exercise his statutory powers and to convey the whole estate the subject of

X. CONSENT FOR ADVANCEMENT OF CHILD.

X. DIRECTION *or* CONSENT *for the* ADVANCEMENT *of a* CHILD (*k*).

TO [*trustee*], of, &c., and [*trustee*] of, &c., the trustees of the settlement, dated, &c., and made in contemplation of our marriage.

WE, the undersigned, hereby consent to your raising the sum of £——, part of the expectant share of our son [*or*, daughter] [A. B.], under the trusts of the said settlement, by selling out a sufficient part of the sum of £—— $2\frac{1}{2}l.$ per cent. Consolidated Stock now standing in your names as trustees of the said settlement, and to your applying the same in or towards payment of the stamp duty, premium, and expenses payable in respect of the articles of clerkship to be entered into by our said son with Messrs. —— & Co., of, &c., Solicitors [*or*, in or towards providing an outfit for our said daughter on the occasion of her intended marriage with [C. D.] of, &c.].

AS WITNESS, &c.

[*Signature of Father and Mother.*]

XI. LICENCE *by* LESSOR *to* LESSEE *to* ASSIGN (*kk*).

I, the undersigned, being the present landlord of a messuage and premises known as —— comprised in an indenture of lease, dated, &c., and made between, &c., and thereby demised to [*lessee*] for the term of —— years from the —— day of ——, hereby consent to the assignment by [*assignor*], the present tenant of the same premises under the said lease, to [*assignee*], of, &c., for the whole remaining term. PROVIDED that this consent shall not authorise any further or other assignment or disposition of the said premises.

AS WITNESS my hand this —— day of ——.

Witness. (Signed) ——.

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the settlement, so that the concurrence of the mortgagee in the conveyance to a purchaser is not required: see *Dickin* v. *Kelsall*, [1908] 1 Ch. 213; and *Davies* v. *Kent*, [1910] 2 Ch. 35; but he sometimes joins to release and convey as in conveyances on sale: Precedent XXVI., *ante*, p. 364.

(*k*) This direction or a memorandum thereof should be indorsed on the settlement.

(*kk*) If under hand, this licence will not require a stamp; but if under seal, a 10*s.* stamp will be necessary. No fine is to be exacted for a licence to assign unless the lease contains an express provision to the contrary: see Conveyancing Act, 1892, s. 3; *West* v. *Gwynne*, [1911] 2 Ch. 1; and see *post*, p. 531, notes (*t*) and (*u*), as to the covenant not to assign without consent.

DISCLAIMERS.

PRECEDENTS.

I. DISCLAIMER *by* DEED-POLL (*l*), *by* ONE *of* TWO TRUSTEES *and* EXECUTORS *of a* WILL (*m*).

TO ALL TO WHOM THESE PRESENTS SHALL COME [*disclaiming trustee*], of, &c., sendeth greeting. WHEREAS [*testator*], late of, &c., deceased, duly made and executed his will, dated, &c., and thereby, and after bequeathing divers pecuniary and specific legacies as therein mentioned, gave, devised, and bequeathed all his real and personal estate to the said [*disclaiming trustee*] and [*continuing trustee*], of, &c., their heirs, executors, administrators, and assigns, upon the trusts therein declared and contained of and concerning the same respectively: AND the said testator appointed the said [*trustees*] executors of his said will [and guardians of his infant children]: AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, without having revoked or altered his said will: AND WHEREAS the said [*disclaiming trustee*] has declined to act as trustee and executor [and guardian], or to accept the gifts, devises, or bequests thereof made to him jointly with the said [*continuing trustee*] in trust as aforesaid, under, in, and by the said will, and has renounced probate thereof (*n*).

Recital of will.

Death of testator.

Recital that disclaiming trustee having declined to act, the other trustee proved the will.

(*l*) A deed is not necessary for a disclaimer (*Re Birchall*, 40 Ch. D. 436; *Re Gordon*, 6 Ch. D. 531), but is generally desirable as evidence of such disclaimer, and if made by deed the disclaimer will bear a 10*s.* stamp. Stamp.

(*m*) See, as to disclaimers, Elphinstone's Introd. 6th ed. 511; Lewin, 12th ed. p. 219. A trustee cannot disclaim a part only of the trusts: *Urch* v. *Walker*, 3 M. & C. 702; *Lord and Fullerton's Contr.*, [1896] 1 Ch. 228. As to married women, see now Married Women's Property Act, 1907, s. 1. It would seem that a married woman can disclaim under this Act without the formalities required by the Real Property Act, 1845, s. 7; see Wolstenholme, 10th ed. p. 259. A married woman can disclaim bequests subject to restraint on anticipation: *Re Wimperis*, [1914] 1 Ch. 502. As to disclaimer of powers, see Conveyancing Act, 1882, s. 6. As to registered land, no transfer should be made by the disclaiming trustee, and no entry of the disclaimer on the register is required. As to disclaimers.

(*n*) The probate will be renounced in the Probate Division of the

I. BY ONE OF TWO TRUSTEES OF A WILL.

Disclaimer.

NOW KNOW YE, that the said [*disclaiming trustee*] hereby absolutely and wholly renounces and disclaims the offices of trustee and executor of the said will [and of guardian of the said children], and all the real and personal estates, trusts, powers, and authorities whatsoever, thereby given, devised, or bequeathed to, or vested in him the said [*disclaiming trustee*], his heirs, executors, administrators or assigns, either jointly with the said [*continuing trustee*], his heirs, executors, administrators or assigns, or otherwise howsoever.

Reservation of beneficial interest.

[2. PROVIDED ALWAYS that nothing herein contained shall operate as a disclaimer or release of any vested or contingent beneficial interest to which the said [*disclaiming trustee*] is now, or he, his heirs, executors, or administrators may hereafter become entitled under the trusts, powers, or provisions of the said will or any bequest or legacy thereby given to the said [*disclaiming trustee*] for his own benefit (*o*).]

IN WITNESS, &c. (*p*).

II. DISCLAIMER *of the* TRUSTS *of a* SETTLEMENT (*by Supplemental Deed*) (*q*).

Disclaimer.

THIS DEED, made the —— day of ——, 19—, by [*disclaiming trustee*], and supplemental to an indenture of settlement dated the —— day of ——, 19—, and expressed to be made between [*parties*]: WHEREAS the said [*disclaiming trustee*] has never executed the said indenture of settlement and has never accepted or acted in the trusts thereof, and is desirous of renouncing and disclaiming such trusts: NOW THESE PRESENTS WITNESS, that the said [*disclaiming trustee*] hereby renounces and disclaims the office of trustee of the principal indenture, and all

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High Court of Justice. If the executor once intermeddle with the assets before a formal disclaimer, he is bound by such implied acceptance of the office and cannot retract. As to the effect of renunciation by an executor, see 20 & 21 Vict. c. 77, s. 79.

(*o*) A legatee may disclaim an onerous and accept a beneficial legacy, unless they are included in the same legacy: *Guthrie* v. *Walrond*, 22 Ch. D. 573; *Re Hotchkys*, 32 Ch. D. 408; *Re Lord Kensington*, [1902] 1 Ch. at p. 207.

(*p*) See also "Appointment of New Trustees," Form XII., p. 94, *supra*, for a form of disclaimer and appointment of a new trustee.

(*q*) Stamp, 10*s*.: see last precedent, note (*l*).

estates, property, trusts, powers, and privileges thereby given to or vested in him, either alone or jointly with any other person or persons whomsoever.

IN WITNESS, &c.

DISENTAILING DEEDS.

PRECEDENTS.

I. DISENTAILING DEED *of* FREEHOLDS *by* TENANT *in* TAIL *in* POSSESSION (*a*).

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*tenant in tail*], of, &c., of the one part, and [*grantee to uses*], of, &c., of the other part: WHEREAS under an indenture dated, &c., and made between [*parties*], being a settlement made in consideration of the marriage which was shortly afterwards solemnised between [A. B.] and [C. B.], both since deceased, the late father and mother of the said [*tenant in tail*] [*or*, under the will dated, &c., and proved, &c., of [A. B.], late of, &c., deceased], the said [*tenant in tail*], is tenant in tail [male] in possession of the hereditaments hereby granted.

Parties.

Recitals:

of title of tenant in tail (*c*).

AND WHEREAS the said [*tenant in tail*] is desirous of barring the entail of the said hereditaments and of all other, if any, hereditaments of which he is tenant in tail as hereinafter mentioned.

NOW THIS INDENTURE WITNESSETH that, the said [*tenant in tail*], hereby grants unto the said [*grantee*], ALL AND SINGULAR the freehold [messuages, farms, tenements, lands, tithe rentcharges, tithes, and] hereditaments situate [*or*, arising (*d*)] in the parishes of —— and —— respectively, in the county of ——,

Testatum.

Grant.

(*a*) See the Fines and Recoveries Act (3 & 4 Will. IV. c. 74), ss. 15—21, 40—49. This deed must be enrolled within six months: see sect. 41.

(*b*) Stamp, 10*s.*, this being a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property: see Finance (1909-10) Act, 1910, s. 74 (6).

(*c*) If preferred, the settlement or will and subsequent events showing the title of the tenant in tail may be recited at length, as in Precedents IV. or V., *post*, pp. 482 or 484.

(*d*) The word "arising" applies to the incorporeal hereditaments: see *Crompton* v. *Jarratt*, 30 Ch. D. 298; *In re Hodgson*, [1898] 2 Ch. 545.

I. BY TENANT IN TAIL IN POSSESSION.

in the said indenture of settlement and in the schedules thereto particularly described [*or*, devised by the said will of the said [A. B.]] (*e*) [save and except such portions of the said freehold hereditaments as by means of any sale or otherwise have ceased to be subject to the trusts and limitations of the said settlement [*or*, will] or otherwise]; AND [by way of grant and not of exception] all other, if any, the freehold hereditaments of or to which the said [*tenant in tail*] is seised or entitled as tenant in tail [male or in tail], whether at law or in equity, under the said settlement [*or*, will], or otherwise, TO HOLD the same unto the said [*grantee*] and his heirs, freed and discharged from all estates in tail [male or in tail] of the said [*tenant in tail*], at law or in equity, and from all estates, rights, interests, and powers to take effect after the determination or in defeasance of such estates in tail [male or in tail], to the use of the said [*tenant in tail*], his heirs and assigns for ever.

Habendum.

To grantee free from entail, to use of grantor in fee.

IN WITNESS, &c. (*f*).

II. DISENTAILING DEED *of* FREEHOLDS *by* TENANT *in* TAIL MALE *in* POSSESSION. (*A short Form without recitals.*)

THIS INDENTURE (*g*), made under the —— day of ——, 19—, BETWEEN [*tenant in tail*], of, &c., of the one part, and [*grantee to uses*], of, &c., of the other part; WITNESSETH that the said [*tenant in tail*], hereby grants unto the said [*grantee*], ALL AND SINGULAR the freehold hereditaments situate

Parties.

Grant.

(*e*) The parcels should be described as concisely and generally as possible to save expense on enrolment. Should the property be registered it should be described as—

"all the land registered under the Land Transfer Acts, 1875 and 1897, under the heading, District ——, Parish ——, County ——, Title No. ——."

Consent of protector.

(*f*) The consent of the protector (if any) of the settlement is required to enable the tenant in tail to create a larger estate than a base fee: see Fines and Recoveries Act, s. 34. As to who are "protectors," see sects. 22—32; and see *In re Wilmer's Trusts*, [1910] 2 Ch. 111, where the disentailing tenant in tail was himself the "protector." As to a married woman entitled to prior estate being a "protector," see M. W. P. Act, 1907, s. 3.

(*g*) Stamp, 10*s.*: see *ante*, p. 479, note (*b*). As to enrolment, see last precedent, note (*a*).

II. DISENTAILING DEED BY TENANT IN TAIL MALE IN POSSESSION.

and arising in the parish of ——, in the county of ——, or elsewhere, of or to which he the said [*tenant in tail*] is seised or entitled, at law or in equity, for any estate in tail [male or in tail] under an indenture dated, &c., and made between [*parties*], being a settlement made in consideration of the marriage which was shortly afterwards solemnized between [A. B.] and [C. B.], both since deceased, the late father and mother of the said [*tenant in tail*] [*or*, under the will, dated, &c., and proved, &c., of [A. B.], late of, &c., deceased], or otherwise, To HOLD the same unto the said [*grantee*] and his heirs, freed and discharged from all estates in tail [male or in tail] of the said [*tenant in tail*], at law or in equity, and from all estates, rights, interests, and powers, to take effect after the determination or in defeasance of such estates in tail [male or in tail], to the use of the said [*tenant in tail*], his heirs and assigns for ever.

Habendum.

Free from entail.

IN WITNESS, &c.

III. CONSENT *of* PROTECTOR *of a* SETTLEMENT *to* BARRING *an* ESTATE TAIL (*h*).

TO ALL TO WHOM THESE PRESENTS SHALL COME (*i*) [*protector*], of, &c., sends greeting: WHEREAS by an indenture of settlement, dated, &c., and made between [*parties*], the messuages, lands, and hereditaments, situate in the parishes of —— and ——, in the county of ——, in the said indenture and in the schedules thereto particularly described, were limited to the use of the said [*protector*], and his assigns during his life with remainder (subject to certain charges therein mentioned which have since determined) to the use of [*tenant in tail*], of, &c., in tail with divers remainders over: NOW THESE PRESENTS WITNESS that the said [*protector*], as protector of the said settlement, hereby consents to every or any disposition and assurance which the said [*tenant in tail*] shall make of the said messuages, lands, and here-

Recital of title of tenants for life and in tail.

Testatum.

Consent of protector.

(*h*) This deed will require enrolment in the Central Office under sect. 46 of the Fines and Recoveries Act, or, if the property is copyhold, on the court rolls of the manor under sect. 51 of the same Act. The enrolment after the death of the tenant in tail is valid: *Whitmore Searle* v. *Whitmore Searle*, [1907] 2 Ch. 332.

(*i*) Stamp, 10*s*.

III. CONSENT OF PROTECTOR.

ditaments, comprised in or which are now by any means subject at law or in equity, to the subsisting uses or trusts of the said settlement or any of such premises or any part thereof for the purpose of barring the estate tail of the said [*tenant in tail*] in the same premises and all estates, rights, interests, and powers to take effect after the determination or in defeasance of such estate tail, but subject and without prejudice to the said estate for life of the said [*protector*] therein, and to all powers and privileges annexed to such estate for life.

IN WITNESS, &c.

IV. DISENTAILING DEED *by* TENANT *in* TAIL *in* REMAINDER (*with the* CONSENT *of the* PROTECTOR, GIVEN *by a* SEPARATE DEED) *to* USE *of* TENANT *in* TAIL *in* FEE SIMPLE, SUBJECT *to the* PROTECTOR'S LIFE ESTATE (*k*).

Parties.

THIS INDENTURE (*l*), made the —— day of ——, 19—, BETWEEN [*tenant in tail*], of, &c., of the one part, and [*grantee to uses*], of, &c., of the other part:

Recitals:

WHEREAS by an indenture of settlement, dated the —— day of ——, 19—, and made between [*settlor*], of the first part, [*protector of the settlement*], of the second part, [*protector's wife*] (therein called and described as [*wife's maiden name*] spinster), of the third part, and [*trustee*] and [*trustee*], of the fourth part, being the settlement executed in contemplation of the then intended marriage, which was shortly afterwards solemnized between the said [*protector*] and [*wife*], the messuages, lands, and hereditaments hereinafter described and expressed to be hereby granted were assured, from and after the solemnization of the then intended marriage, to the uses following, that is to say, to the use of the said [*protector*] during his life, and after his death to the use that the said [*wife*], if she should survive him, should receive during the rest of her life a yearly jointure rentcharge of £——, payable as therein mentioned,

of settlement creating entail;

(*k*) To be enrolled under sect. 41 of the Fines and Recoveries Act: see *ante*, p. 479, note (*a*).

(*l*) Stamp, 10*s.*: see *ante*, p. 479, note (*b*).

IV. DISENTAILING DEED BY TENANT IN TAIL IN REMAINDER.

and subject thereto to the use of the first son of the said [*protector*] by the said [*wife*] in tail [male] with remainders over as therein is mentioned; AND WHEREAS the said [*tenant in tail*] is the first son of the said marriage and has attained the age of twenty-one years; AND WHEREAS the said [*tenant in tail*] is desirous of barring the said estate tail in remainder of him the said [*tenant in tail*] under or by virtue of the hereinbefore recited indenture of settlement in manner hereinafter appearing, AND the said [*protector*] has by a deed poll under his hand and seal, dated the —— day of ——, 19—, given his consent to the disposition and assurance hereinafter expressed (*m*).

that grantor is eldest son; of desire to bar entail; of protector's consent by a separate deed.

NOW THIS INDENTURE WITNESSETH, that to effectuate the said desire, and for the purpose of barring the said estate [in tail male or in] tail of the said [*tenant in tail*], and all estates, rights, interests, and powers to take effect after the determination or in defeasance of the same estate, the said [*tenant in tail*] with the consent of the said [*protector*] as the protector of the said settlement testified by his execution of the said deed poll, hereby grants unto the [*grantee*], ALL THOSE, &c. [*parcels*], and all other if any messuages, lands, or hereditaments to which the said [*tenant in tail*] is entitled to an estate [in tail male or in] tail in remainder by virtue of the hereinbefore recited indenture of settlement, TO HOLD the premises unto the said [*grantee*] and his heirs, subject, nevertheless, to the said life estate therein of the said [*protector*], and to the powers annexed to such life estate so far as the same are subsisting and capable of taking effect, and to the said jointure rentcharge, and all rights, powers, and remedies for securing or recovering the same, but freed and discharged from all estates [in tail male or in] tail of the said [*tenant in tail*] in the same premises, and all estates, rights, interests, and powers, to take effect after the determination or in defeasance of such estates [in tail male or in] tail, to the use of the said [*tenant in tail*], his heirs and assigns.

Testatum.

Grant.

IN WITNESS, &c.

(*m*) For a form of such deed, see last precedent, p. 481.

V. DISENTAILING DEED BY TENANT IN TAIL IN REMAINDER WITH PROTECTOR'S CONCURRENCE.

V. DISENTAILING DEED *by* PROTECTOR *and* TENANT *in* TAIL *of* FREEHOLDS *and* MONEY (*n*) *to be laid out in* PURCHASE *of* LAND *to be* SETTLED *to such* USES *as* PROTECTOR *and* TENANT *in* TAIL *shall* JOINTLY APPOINT, *and in* DEFAULT *of* APPOINTMENT *to* SUBSISTING USES *of* SETTLEMENT (*o*).

THIS INDENTURE (*p*), made the —— day of ——, 19—, BETWEEN [*protector*], of, &c., of the first part; [*tenant in tail*], of, &c., of the second part; and [*grantees to uses*], of, &c., of the third part: WHEREAS [*testator*], late of, &c., by his will dated, &c., appointed [A. B.] and [C. D.] to be the executors thereof, and gave and devised all his manors, messuages, lands, and hereditaments situate in the county of —— to the use of [*protector*] for his life without impeachment of waste, with remainder to the use of his first and other sons successively according to seniority in tail, with divers remainders over: AND WHEREAS the said [*testator*] died on the —— day of ——, and his said will was duly proved on the —— day of ——, in the Principal Probate Registry: AND WHEREAS by a deed poll, dated the —— day of ——, under their hands and seals, the said [A. B.] and [C. D.] have assented to the devise of the said hereditaments made by the will of the said [*testator*] as aforesaid: AND WHEREAS the said [*tenant in tail*] is the first son of the said [*protector*], and attained the age of twenty-one years on the —— day of ——, 19—; AND WHEREAS several sales of parts of the settled lands have with the consent of the said [*protector*] been made under a power in that behalf contained in the said will, and other sales of such land have been made by the said [*protector*] in exercise of his statutory powers in that behalf, and all the hereditaments now remaining unsold, which are, or are believed to be, subject to the uses and limitations of the said will, are particularly described in the first schedule hereto: AND WHEREAS the moneys produced by

Recitals:
of will creating the settlement;
of death of testator;
assent of the executor to the devise (*q*);
state of family;
of sales under power;
of investment of proceeds of sale;

(*n*) See *Re Harvey*, [1901] 2 Ch. 290.

(*o*) To be enrolled: see *ante*, p. 479, note (*a*).

(*p*) This deed does not in effect limit any new estate, other than an estate in fee simple, in the person disentailing, and should therefore bear a 10*s.* stamp (see Finance (1909-10) Act, 1910, s. 74 (6)); but as it purports to give a joint power of appointment and so varies the previous uses, the stamp should be adjudicated.

(*q*) This recital will only be required if the testator died after 1897: see Land Transfer Act, 1897, ss. 1—5, 25.

such sales as aforesaid have been, in pursuance of the direction in that behalf contained in the said will, partly laid out in the purchase of other hereditaments, which are particularly described in the second schedule hereto, and partly invested in the names of [*trustees of will*], in the several stocks, funds, and securities particularly described in the third schedule hereto: AND WHEREAS the said [*protector*] and [*tenant in tail*] are desirous of disentailing all the hereditaments and premises now subject to the subsisting uses and limitations of the said will.

v. DISENTAILING DEED BY TENANT IN TAIL IN REMAINDER WITH PROTECTOR'S CONCURRENCE.

of desire to bar entail.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In pursuance of such desire, and in consideration of the premises, the said [*protector*], so far as relates to the use for his life so limited to him as aforesaid, hereby grants and conveys, and the said [*tenant in tail*], with the consent of the said [*protector*], as protector of the settlement created by the said will, hereby grants unto the said [*grantees*], ALL the manors, messuages, lands and hereditaments described in the first and second schedules hereto respectively, and all other (if any) the hereditaments now subject to the subsisting uses and limitations of the said will, TO HOLD the same unto the said [*grantees*] and their heirs; SUBJECT to the estates, charges, and powers which precede or override the estate tail of the said [*tenant in tail*] other than the estate for life of the said [*protector*], BUT freed from the estate tail of the said [*tenant in tail*], and all estates, rights, interests, and powers to take effect after the determination, or in defeasance of such estate tail, to such uses, upon such trusts, and with and subject to such powers and provisions as the said [*protector*] and [*tenant in tail*] shall by any deed or deeds, revocable or irrevocable, jointly appoint; AND in default of and subject to any such joint appointment to the use of the said [*protector*] and his assigns during his life, without impeachment of waste, in restoration and confirmation of the estate for his life limited to him by the hereinbefore recited will, with the powers annexed to such life estate, with remainder to such uses, upon such trusts, and subject to such powers and provisions as the said [*tenant in tail*], in case he shall survive the said [*protector*], shall at any time or times after the death of the said [*protector*], by any deed or deeds, revocable or irrevocable [or by will or codicil expressly referring to this present power, or the property subject thereto] (*r*), appoint;

Grants.

Parcels.

Habendum, freed from the entail.

To such uses as tenant for life and tenant in tail shall appoint.

In default to protector for life and remainder to such uses as tenant in tail appoints.

(*r*) See *Phillips* v. *Cayley*, 43 Ch. D. 222; *Re Davies*, [1892] 3 Ch. 63; *Re Lane*, [1908] 2 Ch. 581.

V. DISENTAILING DEED BY TENANT IN TAIL IN REMAINDER WITH PROTECTOR'S CONCURRENCE.

And in default of such appointment, and so far as no such appointment shall extend, to the uses, upon the trusts, and with and subject to the powers and provisions which, under or by virtue of the said will, were subsisting with regard to the premises hereby conveyed immediately before the execution of these presents, and so as to restore and confirm the same uses, trusts, powers, and provisions.

And in default to previously subsisting uses of the settlement.

2. For the consideration aforesaid the said [*protector*], and the said *tenant in tail*, with the consent of the said [*protector*], as protector of the said settlement, according to their respective interests, hereby assign to the said [*grantees*] all the moneys, stocks, funds, and securities described in the third schedule hereto, and all other (if any) the moneys, stocks, funds, and securities which, or the proceeds of which, are liable to be laid out in the purchase of lands to be settled to the subsisting limitations of the said will. To HOLD the same unto the said [*grantees*] (*rr*), subject to the estates, &c. (*ut supra*). But freed from the estate tail, &c. (*ut supra*). Upon the like trusts, and with and subject to the like powers and provisions as if the same were capital money arising from a sale made after the date of these presents of the freehold hereditaments hereby assured, and so that the same shall be impressed with a trust for the investment thereof in the purchase of freehold hereditaments to be settled to the uses and with and subject to the powers and provisions to, with, and subject to which the freehold hereditaments hereby assured will stand limited immediately after the execution of these presents, but not so as to increase or multiply charges and powers of charging.

Assignment of moneys.

Habendum.

3. The said [A. B.] and [C. D.] shall be the trustees of the settlement hereby made for the purposes of the Settled Land Acts, 1882 to 1890, and of any Act or Acts amending or extending the same (*s*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

(*rr*) As to the omission of words of limitation, see *Re Monckton*, [1913] 2 Ch. 636.

(*s*) As the deed after the death of the protector operates as a new settlement, this clause should be inserted.

VI. SURRENDER *out of* COURT *of* COPYHOLDS *by* LEGAL TENANT *in* TAIL *in* POSSESSION *previously to his* MARRIAGE (*t*).

VI. SURRENDER TO BAR LEGAL ESTATE TAIL IN COPYHOLDS.

The Manor of —— in the County of ——.

BE IT REMEMBERED (*u*) that, on the —— day of ——, 19— [*surrenderor*], one of the customary tenants of the said manor, came before [*steward*], the steward of the said manor, and in consideration of a marriage agreed upon and intended shortly to be solemnized between the said [*surrenderor*] and [*intended wife*], of, &c., spinster, and for the purpose of defeating and barring all estates in tail [male or in tail] of the said [*surrenderor*] in the hereditaments hereinafter mentioned, and all estates, rights, interests, and powers to take effect after the determination or in defeasance of such estates tail, did out of Court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said [*steward*] by the rod, according to the custom of the said manor, ALL THAT [*parcels*], with the appurtenances to the said premises belonging, to which said hereditaments and premises the said [*surrenderor*] was admitted tenant at a general court held for the said manor on the —— day of ——, 19—, to hold to him the said [*surrenderor*], in tail according to the form and effect of a certain indenture therein mentioned or referred to, TO THE USE of the said [*surrenderor*], his heirs and assigns, for ever until the solemnization of the said intended marriage, and after the solemnization thereof, TO THE USE of [*trustees*], of, &c., their heirs and assigns, during the life of the said [*intended wife*], upon trust, from time to time to pay the rents and profits arising from the said premises, unto the said [*intended wife*] for her separate use, and so that the said [*intended wife*], during her said intended or any future coverture, shall have no power to anticipate the said

Consideration.

Surrender.

Parcels.

Uses to bar entail.

(*t*) As to barring entails in copyholds, see sects. 50—54 of the Fines and Recoveries Act. In the case of a legal estate tail a surrender will be necessary, a memorandum of which will be entered on the court rolls at the time of surrender, and no other inrolment will be required. As to barring an equitable estate tail, see *post*, p. 489, note (*a*). As to what is a "disposition" by a married woman under sect. 77 of the Act, see *Carter* v. *Carter*, [1896] 1 Ch. 62. As to enfranchisement barring the entail, see *Ex parte School Board for London*, 41 Ch. D. 547.

(*u*) Stamp, *ad valorem* as on a marriage settlement: see Stamp Act, 1891, *tit.* "Settlement." The stamp must be adjudicated.

VI. SURRENDER TO BAR LEGAL ESTATE TAIL IN COPYHOLDS.

rents and profits, or any part thereof; And from and after the decease of the said [*intended wife*], to the use of the said [*surrenderor*], his heirs and assigns, for ever, according to the custom of the said manor, by and under the rents, fines, heriots, suits, and services therefor due and of right accustomed.

[*Signature of tenant in tail.*]

Taken and acknowledged the day and year first above written by me. } [*Signature of Steward.*]

VII. SURRENDER *of* Copyholds *by* Equitable Tenant *in* Tail *in* Remainder, *with* Consent *of* Protector *to* Bar *the* Entail (*x*).

Manor of —— in the County of —— } The —— day of —— in the year 19— (*y*).

Recital of title.

Whereas [*recite settlement or will and any subsequent events under or by virtue of which lands are vested in trustees upon trusts under which protector is tenant for life and tenant in tail is tenant in tail in remainder thereof*]:

Testatum.

Now be it remembered that, on the day and in the year first above mentioned, the said [*tenant in tail*] came before [*steward*], the steward of the said manor, and

Memorandum of surrender.

for the purpose of barring all estates in tail in equity or otherwise of him the said [*tenant in tail*] in the hereditaments hereinafter mentioned, and all estates, rights, and interests to take effect after the determination or in defeasance of such estates tail, and with the consent of the said [*protector*], testified by his signature of the memorandum hereunder written, did out of Court surrender into the hands of the lord of the said manor by the hands and acceptances of the said [*steward*] by the rod, according to the custom of the said manor, All that [*parcels*] to which said hereditaments and premises the said [*trustees*] were admitted tenants at a general court held for the said manor on the —— day of ——, to hold, according to the

Uses to entail.

forms and effect of the said [deed *or* will], To the use of the said

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(*x*) The surrender must be entered on the court rolls: see next page, note (*a*). Sect. 53 of the Fines and Recoveries Act does not apply to customary freeholds.

(*y*) Stamp, 10*s*.

[*tenant in tail*], his heirs and assigns, for ever, according to the custom of the said manor, by and under the rents, fines, heriots, suits, and services therefor due and of right accustomed.

VII. SURRENDER TO BAR EQUITABLE ESTATE TAIL IN COPYHOLDS WITH PROTECTOR'S CONCURRENCE.

[*Signature of Tenant in Tail.*]

Taken and acknowledged the day and year first above written by me. } [*Signature of Steward.*]

MEMORANDUM OF PROTECTOR'S CONSENT (*z*).

I, the above named [*protector*], as protector of the above mentioned settlement, hereby give my consent to the above surrender.

AS WITNESS, &c.

[*Signature of Protector.*]

Witness.

[*Signature of Witness.*]

VIII. DISENTAILING DEED *by* TENANT *in* TAIL *in* POSSESSION *of* EQUITABLE ESTATE *in* COPYHOLDS (*a*).

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*tenant in tail*], of, &c., of the one part, and [*grantee to uses*], of, &c., of the other part: WHEREAS under or by virtue of the will of [*testator*], late of, &c., deceased, dated, &c., and proved, &c., the legal estate in divers messuages, lands, and hereditaments, held by copy of court roll of the manor of ——, in the county of ——, are vested in trustees upon the trusts in the will mentioned, which have all now determined or ceased to take effect, and subject thereto upon trust for the said [*tenant in tail*] in tail, with divers remainders over: NOW THIS INDENTURE WITNESSETH that, for the purpose of barring the equitable estate tail of the said [*tenant in tail*] in the said copyhold premises

Parties.

Recital of title.

Testatum.

(*z*) The protector's consent may be given by a separate deed (see *ante*, Precedent III., p. 481), in which case the fact of such consent will be recited in the surrender, as in Precedent IV., *ante*, p. 482.

(*a*) An equitable estate tail in copyholds may be barred, either by a disentailing deed entered on the court rolls, or by surrender (Fines and Recoveries Act, ss. 50, 53). The disentailing deed must be entered on the court rolls within six calendar months after execution: *Honywood* v. *Forster*, 9 W. R. 855; 30 Beav. 1; *Green* v. *Paterson*, 32 Ch. D. 95. No other inrolment will be necessary: F. & R. Act, s. 54.

(*b*) Stamp, 10*s*.

VIII. DISENTAILING DEED OF COPYHOLDS.

the said [*tenant in tail*] hereby grants unto the said [*grantee*] all, &c. [*parcels*], and all other, if any, the copyhold or customary messuages, lands, and hereditaments, held of the same manor, and to which the said [*tenant in tail*] is entitled for an equitable estate tail in possession, To HOLD unto the said [*grantee*] and his heirs, freed and discharged from the equitable estate or estates tail of the said [*tenant in tail*], and from all remainders, reversions, estates, rights, interests, and powers to take effect after the determination or in defeasance of such estate or estates tail, to the use of the said [*tenant in tail*], his heirs and assigns, according to the custom of the said manor, by and under the rents, fines, heriots, suits, and services therefor due and of right accustomed.

Parcels.

Habendum, freed from the entail.

To the use of tenant in tail in fee.

IN WITNESS, &c.

IX. DEED *by* TENANT IN TAIL MALE *in* REMAINDER *to* CREATE *a* BASE FEE.

THIS INDENTURE (*c*), made the —— day of ——, 19—, BETWEEN [*tenant in tail*], of, &c., of the one part; and [*grantee to uses*], of, &c., of the other part: WHEREAS under or by virtue of an indenture of settlement dated, &c., and made between [*parties*], the several messuages, lands, and hereditaments described in the same indenture and in the schedules thereto, and hereby granted, now stand limited to the use of [*protector*], and his assigns, during his life, with remainder, subject to a jointure rentcharge of £——, thereby limited in favour of [*protector's wife*], and her assigns, during her life, if she shall survive the said protector, and also to the sum of £—— and interest, raisable as therein mentioned, for portions for the younger sons and the daughters of the said [*protector*], and to a term of 1,000 years thereby limited for securing the same portion moneys, to the use of the said [*tenant in tail*], in tail male with divers remainders over; AND WHEREAS the said [*tenant in tail*] is desirous of barring, as far as may be, all his estates in tail male or in tail under the said settlement and of converting the same into a base fee.

Parties.

Recitals: of title of tenant in tail;

of desire to create base fee.

Testatum.

NOW THIS INDENTURE WITNESSETH, that the said [*tenant in tail*] hereby grants unto the said [*grantee*], ALL and

Grant.

(*c*) Stamp, 10*s*. This deed must be enrolled.

singular the messuages, lands, and hereditaments in the several parishes of —— and ——, in the county of ——, or elsewhere in England or Wales, of or to which he, the said [*tenant in tail*], is seised or entitled at law or in equity, for any estate in tail male or in tail in remainder under or by virtue of the said settlement, or otherwise howsoever, To HOLD the same unto the said [*grantee*], and his heirs, subject and without prejudice to the said life estate of the said [*protector*], and to all uses and estates limited or created by the said settlement which precede the estate in tail male of the said [*tenant in tail*], and to the powers annexed to such preceding uses and estates, so far as such uses, estates, and powers are now subsisting and capable of taking effect, but freed and discharged from all estates in tail male or in tail whether at law or in equity, therein of the said [*tenant in tail*], to the use of the said [*tenant in tail*], his heirs and assigns, to the intent that the same may be converted into a base fee.

Habendum, to grantee to use of grantor so as to create base fee.

IN WITNESS, &c.

X. DEED *to* ENLARGE *a* BASE FEE *into an* ESTATE *in* FEE SIMPLE (*to be* INDORSED *on the* DEED *creating the* BASE FEE) (*d*).

THIS INDENTURE (*e*), made the —— day of ——, 19—, BETWEEN the within named [*owner of base fee*], of the one part, and the within named [*grantee to uses*], of the other part: WHEREAS the within named [*protector*] died on the —— day of ——, 19—, leaving the within mentioned [*wife*] him surviving; AND WHEREAS there have been issue of the said [*protector*] by his said wife —— children, and no more, that is to say, the said [*owner*], his eldest son, and —— younger children, namely [*names*]; AND WHEREAS the said [*owner*] is desirous of enlarging the base fee into which his estates in tail male and in tail under the within mentioned settlement were converted by the within written indenture into an absolute estate in fee simple.

Parties.

Recitals: of death of protector; of state of family; of desire to enlarge base fee.

NOW THIS INDENTURE WITNESSETH that, for effectuating the said desire, the said [*owner*] hereby grants and confirms unto the said [*grantee*], ALL and singular the messuages,

Grant.

(*d*) This deed must be enrolled.

(*e*) Stamp, 10*s*.

X. DEED ENLARGING BASE FEE.

Habendum, to grantee to use of grantor in fee simple.

lands, and hereditaments expressed to be granted by the within written indenture, To HOLD the same unto the said [*grantee*] and his heirs, subject to the within mentioned jointure rentcharge of £——, and to the sum of £—— so raisable for portion moneys as within is mentioned, and to all other, if any, the uses and estates limited or created by the said settlement, which precede the base fee into which the estates in tail male and in tail of the said [*owner*] were converted by the within written indenture, and to any powers annexed to such preceding uses or estates, which may respectively be now subsisting or capable of taking effect, BUT freed and discharged from all estates, rights, interests, and powers, to take effect upon the determination or in defeasance of the same base fee, to the use of the said [*owner*], his heirs and assigns, to the intent that such base fee may be enlarged into an absolute estate in fee simple, subject as aforesaid.

IN WITNESS, &c.

EXCHANGES.

PRELIMINARY NOTE.

EXCHANGES of land may be effected (i.) by deed of exchange operating by common law, (ii.) by mutual conveyances, or (iii.) by an order of the Board of Agriculture and Fisheries under the Inclosure Acts. (See *post*, p. 498, note (*d*); and K. & E., 10th ed., Vol. I., p. 814.)

A tenant for life is empowered to make an exchange of settled land under the Settled Land Act, 1882, s. 3 (iii.). See also sects. 4 (as to price), 5 (transfer of incumbrances), 17 (1) (as to minerals), 18 (as to raising money for equality of exchange), 20 (as to conveyances), 21 (iv.) (payment out of capital for equality of exchange), 22 (investment), and 24 (settlement of land acquired), and Settled Land Act, 1890, s. 5 (as to creation of easements on exchange).

An "exchange" is not a "sale" under the Land Transfer Act, 1897, s. 20 (1), so as to make the registration of title necessary in a compulsory area (see Brickdale and S. pp. 61, 338, 339), except, perhaps, where money is paid for equality of exchange.

(See K. & E., 10th ed., Vol. I., p. 807.) For an instrument of exchange of registered land, see Form 42 under L. T. R. 154.

The stamp on a deed of exchange where no money is paid for equality of exchange, or where it does not exceed 100*l*., is 10*s*. (See Stamp Act, 1891, Sched.: *tit.* "Exchange," and s. 73.) Beyond this sum *ad valorem* duty is payable as on a conveyance on sale: Finance (1909-10) Act, 1910, s. 73.

See further as to exchanges, Bythewood, 4th ed., Vol. II., p. 924; and K. & E., 10th ed., Vol. I., pp. 806, 807.

PRECEDENTS.

I. CONVEYANCE *of* LANDS *in* EXCHANGE *for other* LANDS *conveyed by a* SEPARATE DEED *of even* DATE.

THIS INDENTURE (*a*), made the —— day of ——, 19—, BETWEEN [*grantor*], of, &c., of the one part, and [*grantee*], of the other part: WHEREAS the said [*grantor*], being seised of the several closes of land and hereditaments, hereby conveyed and described in the first schedule hereto, for an estate of fee simple in possession free from incumbrances, has agreed with the said [*grantee*] to exchange the same for the messuage, lands, and hereditaments of the said [*grantee*], described in the second schedule hereto: AND WHEREAS, in pursuance of the said agreement, by an indenture bearing even date with these presents, and expressed to be made between the said [*grantee*], of the one part, and the said [*grantor*], of the other part, the said messuage and premises described in the second schedule hereto have been [*or*, are intended to be] conveyed unto and to the use of the said [*grantor*], his heirs and assigns. NOW THIS INDENTURE WITNESSETH that, in further pursuance of the said agreement, and in consideration of such conveyance as aforesaid of the said messuage and premises described in the second schedule hereto, the said [*grantor*], as beneficial owner, hereby grants unto the said [*grantee*], ALL THOSE the several closes or pieces of land and hereditaments situate in the parish of ——, in the county of ——, which last mentioned premises are particularly described

Parties.

Recitals: of agreement to exchange;

of execution of deed of even date.

Testatum.

Conveyance.

(*a*) Stamp, 10*s*.

I. EXCHANGE BY A SEPARATE DEED.

in the first schedule hereto, To HOLD the same unto and to the use of the said [*grantee*], his heirs and assigns, for ever.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

II. CONVEYANCE *of* LANDS (PART *being* COPYHOLDS) *by way of* EXCHANGE *by a* SINGLE DEED, *where* MONEY *is* PAID *by* ONE *of the* PARTIES *for* EQUALITY *of* EXCHANGE.

THIS INDENTURE (*b*), made the —— day of ——, 19—,

Parties. BETWEEN [A. B.], of, &c., of the one part, and [C. D.], of, &c.,

Recitals: of the other part: WHEREAS the said [A. B.] is seised of the

of seisin; several messuages, lands, and hereditaments described in the first schedule hereto for an estate of fee simple in possession, free from incumbrances: AND WHEREAS the said [C. D.] is seised of the several messuages, lands, and hereditaments described in the second schedule hereto, as to such of the same premises as are described in the first part of the said second schedule, being freeholds, for an estate of fee simple, and as to such of the same premises as are described in the second part of the said second schedule, being copyholds of the manor of ——, in the county of ——, for an estate of inheritance according to the custom of the said manor,

of agreement for exchange; in possession, free from incumbrances: AND WHEREAS the said [A. B.] and [C. D.] have agreed to effect such exchange as is hereinafter contained of the said premises described in the first and second schedules hereto respectively, and upon the treaty for the said exchange it was agreed that the said [C. D.] should pay to the said [A. B.] the sum of £—— for equality of exchange: AND

of agreement that deeds, &c. shall be retained by respective parties. WHEREAS the deeds and documents specified in the third schedule hereto relate not only to the said premises described in the first schedule hereto, but also to other lands and hereditaments of the said [A. B.]; AND the deeds and writings specified in the fourth

(*b*) Stamp, 10*s*., and a further *ad valorem* stamp on the amount of the consideration paid for equality of exchange. This deed will be executed in duplicate.

schedule hereto relate not only to the said premises described in the second schedule hereto, but also to other lands and hereditaments of the said [C. D.]; AND it has been agreed that the said deeds and documents specified in the said third schedule shall be retained by the said [A. B.], and that the said deeds and documents specified in the said fourth schedule shall be retained by the said [C. D.], and that each of them, the said [A. B.] and [C. D.], shall give to the other such acknowledgment and undertaking with regard to the deeds and documents so retained by them respectively as is hereinafter contained.

NOW THIS INDENTURE WITNESSETH as follows:—

Grant of lands in first schedule.

1. In pursuance of the said agreement for an exchange, and in consideration of the grant and covenant to surrender hereinafter respectively made and entered into by the said [C. D.] and of the sum of £——, now paid by the said [C. D.] to the said [A. B.] (the receipt whereof the said [A. B.] hereby acknowledges), the said [A. B.], as beneficial owner, hereby grants unto the said [C. D.], ALL THOSE the several messuages, lands, tenements, and hereditaments situate in the parish of ——, in the county of ——, which premises are particularly described in the first schedule hereto: TO HOLD the same unto and to the use of the said [C. D.], his heirs and assigns.

Grant of freehold lands in second schedule.

2. In further pursuance of the said agreement, and in consideration of the grant hereinbefore made by the said [A. B.], the said [C. D.] as beneficial owner, hereby grants unto the said [A. B.], ALL THOSE the several messuages, lands, and hereditaments situate in the parish of ——, in the county of ——, which premises are particularly described in the first part of the second schedule hereto: TO HOLD the same unto and to the use of the said [A. B.], his heirs and assigns.

Covenant to surrender copyholds in second schedule.

3. For the consideration last aforesaid, the said [C. D.], as beneficial owner, hereby covenants with the said [A. B.] that he, the said [C. D.], or his heirs, and all other necessary parties, will forthwith, at the cost of the said [A. B.], his heirs or assigns, surrender or cause to be surrendered into the hands of the lord of the said manor of ——, according to the custom thereof, ALL THOSE the several pieces of land and hereditaments situate in the parish of —— aforesaid, which premises are particularly described in the second part of the second schedule hereto, to the use of the said [A. B.], his heirs and assigns, for

II. EXCHANGE BY A SINGLE DEED.

ever, according to the custom of the said manor, at, by, and under the rents, fines, heriots, suits, and services therefor due and of right accustomed: AND that until the same premises shall be duly surrendered in pursuance of this covenant, the said [C. D.] and his heirs will stand seised thereof in trust for the said [A. B.], his heirs and assigns.

Declaration of trust until surrender.

Acknowledgment, &c. as to documents.

4. AND the said [A. B.] hereby acknowledges the right of the said [C. D.] to the production of the several deeds and documents specified in the third schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof. AND the said [C. D.] hereby acknowledges the right of the said [A. B.] to production of the several deeds and documents specified in the fourth schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

Acknowledgment, &c. as to documents in fourth schedule.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

THE FOURTH SCHEDULE ABOVE REFERRED TO.

III. CONVEYANCE *of* FREEHOLDS *to* TRUSTEES *to the* USES *of a* SETTLEMENT *in* EXCHANGE *for* SETTLED LANDS, *conveyed by the* TENANT *for* LIFE *thereof by a* DEED *of even* DATE (*bb*).

THIS INDENTURE (*c*), made BETWEEN [*grantor*], of, &c., of the first part; [*tenant for life*], of, &c., of the second part; and [*trustees of the settlement*], of the third part: WHEREAS the said [*grantor*] is seised of the lands and hereditaments described in the first schedule hereto for an estate in fee simple in possession free from incumbrances: AND WHEREAS by an indenture, dated the —— day of ——, 18—, and expressed to be made between

Parties.

Recitals: of seisin of grantor;

of seisin of tenant for life of settled lands;

(*bb*) See Preliminary Note, *ante*, p. 492.

(*c*) Stamp, 10*s.*; and a further *ad valorem* stamp as on a conveyance on sale for the amount payable for equality of exchange.

III. EXCHANGE BY TENANT FOR LIFE.

[*parties*] (being a settlement made in consideration of the marriage afterwards solemnized between the said [*tenant for life, and his wife*]), the lands and hereditaments described in the second schedule hereto were, with other hereditaments, limited and assured, from and after the solemnization of the marriage, to the use of the said [*tenant for life*], for his life, with divers remainders over: AND WHEREAS the said [*trustees*] are the present trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890: AND WHEREAS it has been agreed by and between the parties hereto that the said [*grantor*] should convey the hereditaments described in the first schedule hereto in fee simple in possession, free from incumbrances, unto the said [*trustees*], in manner hereinafter appearing, in consideration of the conveyance by the said [*tenant for life*], as such tenant for life as aforesaid, of the hereditaments described in the second schedule hereto (being part of the settled land comprised in the said settlement), and in further consideration of the sum of £—— to be paid for equality of exchange by the said [*trustees*] to the said [*grantor*] out of moneys in their hands, being capital money arising under the said Settled Land Acts: AND WHEREAS in pursuance and part performance of the said agreement, by an indenture bearing even date with these presents, and expressed to be made between the said [*tenant for life*], of the one part, and the said [*grantor*], of the other part, the said [*tenant for life*], in exercise of the power in that behalf given to him by the said Settled Land Acts conveyed unto and to the use of the said [*grantor*], in fee simple in possession, free from incumbrances, the hereditaments described in the second schedule hereto, as the said [*grantor*] hereby acknowledges. NOW THIS INDENTURE WITNESSETH as follows:—

of agreement for exchange;

of conveyance of lands given in exchange.

Testatum.

1. In further pursuance of the said agreement, and in consideration of the premises, and in further consideration of the sum of £——, upon the execution of these presents, paid to the said [*grantor*] by the said [*trustees*] out of such capital moneys as aforesaid, with the consent (hereby testified) of the said [*tenant for life*] (the receipt of which sum the said [*grantor*] hereby acknowledges), the said [*grantor*], as beneficial owner, grants unto the said [*trustees*], ALL THOSE the lands and hereditaments situate at ——, in the county of ——, which are particularly described in the first schedule hereto, To HOLD the premises hereby

Conveyance of lands in first schedule to trustees.

III. EXCHANGE BY TENANT FOR LIFE.

granted unto the said [*trustees*], and their heirs, to such of the uses, upon such of the trusts, and with, under, and subject to such of the powers, provisions, and declarations in and by the said indenture of settlement expressed, declared, and contained of and concerning the lands and hereditaments therein comprised as are now subsisting and capable of taking effect.

Acknowledgment as to deeds.

2. The said [*grantor*] hereby acknowledges the right of the said [*trustees*] to the production of the documents mentioned in the third schedule hereto, the possession of which is retained by the said [*grantor*], and to delivery of copies thereof, and hereby undertakes with the said [*trustees*] for the safe custody thereof: AND the said [*trustees*] hereby acknowledge the right of the said [*grantor*] to the production of the said indenture of settlement, and to delivery of copies thereof.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

THE THIRD SCHEDULE ABOVE REFERRED TO.

IV. AGREEMENT *for an* EXCHANGE *to be carried out by the* BOARD OF AGRICULTURE AND FISHERIES (*d*). VARIATION *when a* RENTCHARGE *is to be* CREATED *for* EQUALITY *of* EXCHANGE.

MEMORANDUM OF AGREEMENT (*e*), made the —— day of ——, BETWEEN A., of, &c., of the one part, and B., of, &c., of the other part.

(*d*) An exchange is frequently carried out by the Board of Agriculture and Fisheries under the Inclosure Acts, 1845—1882, and the Commons Act, 1899, in cases where the parties desire to save the expense of a double investigation of title, or where they are not otherwise able to effect a valid exchange. Parties cannot avail themselves of these Acts

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(*e*) Stamp, 6*d*.

IV. EXCHANGE BY BOARD OF AGRICULTURE AND FISHERIES.

WHEREAS the said A. is seised of the hereditaments set out in the first schedule hereto in fee simple in possession free from incumbrances, and the said B. is seised of the hereditaments set out in the second schedule hereto in fee simple in possession free from incumbrances. Recitals: Title.

AND WHEREAS it has been agreed between the said A. and B. to make such exchange as is hereinafter mentioned [and that the said A. should grant to the said B. a yearly rentcharge of £—— per annum charged on and arising out of the hereditaments described in the second schedule hereto, for equality of exchange].

NOW IT IS HEREBY AGREED as follows:—

1. The said A. shall cause the hereditaments described in the first schedule, with their appurtenances, to be vested in the said B., his heirs and assigns, in exchange for the hereditaments described in the second schedule hereto, with their appurtenances, which the said B. shall cause to be vested in the said A., his heirs and assigns. Agreement to exchange.

2. The said A. shall grant to the said B. a yearly rentcharge of £—— arising out of and to be a charge on the hereditaments mentioned in the second schedule hereto, and to be payable half-yearly on the 25th day of December and the 26th day of June. To create a rentcharge.

3. The exchange shall be carried out and perfected by the Board of Agriculture and Fisheries under the provisions of the Acts of Parliament relating to the exchange of lands on or before the —— day of —— next. Completion.

4. In case the said exchange shall not be perfected on the —— day of —— next by reason of the [*wilful*] default or neglect of either party, it shall be lawful for the party not so in default at any time after the said —— day of ——, to determine this agreement by giving notice of such determination in writing to the other of the said parties. Rescission.

5. The costs and expenses of and incidental to these presents and the carrying out and perfecting of the said exchange shall Costs.

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where the inequality in value between the lands to be exchanged exceeds one-eighth of the actual value of the land of smaller value: 20 & 21 Vict. c. 31, s. 8. Such inequality of value can, however, be compensated under sect. 6 by a perpetual rentcharge "to be charged upon the land for the excess in value whereof the same is intended as an equivalent," or upon part thereof. Instructions and forms for exchanges under these Acts may be obtained from the Board of Agriculture and Fisheries.

IV. EXCHANGE BY BOARD OF AGRICULTURE AND FISHERIES.

be paid by each party in equal shares [*or*, as to two-fifths thereof by the said A., and as to three-fifths thereof by the said B.]

[6. In case the said exchange shall not be perfected through the default of either party, the party so in default shall reimburse the other on demand all costs and expenses incurred by him in relation to the said intended exchange.]

IN WITNESS, &c.

INDEMNITY.

PRECEDENTS.

I. DEED OF COVENANT *to* INDEMNIFY *a* TENANT *paying* RENT, *where the* TITLE *to the* REVERSION *is in* DISPUTE (*f*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [*landlord*], of, &c., of the one part, and [*tenant*], of, &c., of the other part: WHEREAS, by an indenture of lease dated the —— day of ——, and made between the said [*landlord*], of the one part, and the said [*tenant*], of the other part: ALL those [*parcels*] were demised unto the said [*tenant*] for the term of —— years from the —— day of ——, at the annual rent of £——, and subject to the covenants and conditions therein contained: AND WHEREAS an action is now pending between the said [*landlord*] and certain other persons as to the right or title of the said [*landlord*] to the reversion of the said messuage and premises comprised in the said indenture of lease, but the said [*tenant*] has agreed to pay the rent for the same, as and when it shall accrue due, to the said [*landlord*] upon receiving from the said [*landlord*] an indemnity in manner hereinafter appearing. NOW the said [*landlord*] covenants with the said [*tenant*] that the said [*landlord*], his executors, administrators, or assigns, will henceforth indemnify the said [*tenant*], his heirs, executors, administrators, or assigns, against all distresses, entries, claims, demands, actions, and other proceedings for the recovery of or in relation to the said rent, or any

Recitals: of lease;

of dispute as to title.

Covenant to indemnify tenant from distress, &c.

(*f*) Stamp, 10*s*. For other forms of indemnity, see under "Bonds," "Releases," and other headings.

part thereof, and also against all losses, costs, charges, damages, or expenses which he or they may pay or sustain, by reason or on account of the payment of the said rent, or any part thereof, to the said [*landlord*], his heirs or assigns, in manner aforesaid or otherwise in relation to the premises. I. TO INDEMNIFY A TENANT PAYING RENT.

IN WITNESS, &c.

II. DEED OF COVENANT *and* DECLARATION *of* TRUST *of a* SUM *of* STOCK *invested in the* NAMES *of* TRUSTEES, *to* INDEMNIFY *a* PURCHASER *of* LANDS *against a* LIFE ANNUITY *charged thereon.*

THIS INDENTURE (*g*), made the —— day of ——, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the first part; [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the third part. Parties.

WHEREAS under or by virtue of the will of [*testator*], late of, &c., deceased, the vendor, became seised of certain messuages, lands and hereditaments, situate at ——, in the county of ——, for an estate of fee simple in possession, free from incumbrances, except an annuity of 200*l.*, payable to [*annuitant*], of, &c., during her life, by equal quarterly payments on the usual quarter days, and charged on the said premises by the said will. Recitals: of vendor's seisin subject to annuity;

AND WHEREAS by an indenture bearing even date herewith, and made between the vendor, of the one part, and the purchaser, of the other part, the said messuages and premises were, for the consideration therein mentioned, conveyed to the purchaser in fee simple. of sale and conveyance to purchaser;

AND WHEREAS, upon the treaty for the said purchase, it was agreed that the sum of £——, part of the purchase-money thereof, should be invested by the vendor in the names of trustees, to be held by them upon the trusts hereinafter contained of and concerning the same by way of an indemnity to the purchaser against the said annuity. of agreement for indemnity;

AND WHEREAS, in pursuance of the said agreement, the vendor has invested the sum of £—— in the purchase, in the names of the of purchase of stock.

(*g*) Stamp, 10*s.*: see Stamp Act, 1891, first schedule, "Declaration of Trust."

II. INDEMNITY BY DECLARATION OF TRUST OF STOCK.

trustees, of the sum of £- — Two and a Half per cent. Consolidated Stock.

NOW THIS INDENTURE WITNESSETH as follows:

Testatum.

Covenant by vendor to pay annuity and indemnify purchaser therefrom.

1. The vendor covenants with the purchaser that the vendor, his executors, administrators or assigns, will henceforth pay the said annuity of £ —, as and when the same shall become payable as aforesaid, and will indemnify and keep indemnified the purchaser, his heirs and assigns, and the said premises comprised in the said indenture of even date herewith, and every part thereof, against all claims, demands, actions and other proceedings, for the recovery of, or in relation to the said annuity, or any part thereof.

Declaration of trusts of stock.

2. The trustees shall stand possessed of the said sum of £—— Two and a Half per cent. Consolidated Stock: UPON TRUST, that the trustees, or the survivor of them, or the executors or administrators of such survivor, or their or his assigns (who are hereinafter collectively referred to as "the trustees"), shall either permit the said sum of stock to remain in its present state of investment, or shall, at their discretion, sell and dispose of the same and invest the proceeds of such sale in the names of the trustees in the purchase of any of the stocks, funds, shares or securities hereinafter mentioned, with power from time to time, with the consent in writing of the vendor, to transpose all or any of such investments into others of any nature hereby authorised.

On default of vendor to pay annuity.

3. The trustees shall stand possessed of the said sum of stock and the investments thereof (hereinafter called "the trust funds"), and the dividends and annual income thereof, upon the trusts following, that is to say: UPON TRUST out of the dividends and annual income of the trust funds, or out of the proceeds of the sale of a competent part of the trust funds, to pay all such sums as shall be necessary from time to time for the purpose of paying and keeping down the said annuity, as and when the same shall become payable as aforesaid, in case the vendor shall neglect or fail so to do by the space of —— days after any quarterly payment of the same shall become due, and for the purpose of keeping indemnified the purchaser, his heirs and assigns, and the said premises comprised in the said indenture of even date herewith, and every part thereof, against all claims, demands, actions and other proceedings for the recovery of or in relation to the said annuity or any part thereof.

II. INDEMNITY BY DECLARATION OF TRUST OF STOCK.

4. PROVIDED ALWAYS, that It shall be lawful for the trustees, for the purposes aforesaid, or any of them, to sell and convert into money the said trust funds, or any part thereof, as and when occasion may require.

Power for trustees to realize.

Ultimate trust for benefit of vendor.

5. Subject to the trusts aforesaid, the trustees shall stand possessed of the trust funds and the investments thereof, and the dividends and annual income thereof, or so much thereof respectively as shall not actually have been required and applied under the trusts and provisions hereinbefore contained: UPON TRUST, during the life of the said [*annuitant*], to pay the dividends and income of the trust funds, as and when the same shall be received, to the vendor, his executors, administrators or assigns: AND from and after the decease of the said [*annuitant*], UPON TRUST for the vendor absolutely.

6. Investment Clauses, Vol. 2, pp. 355 *et seq.*

Power of appointing new trustees.

7. The power of appointing a new trustee of these presents in the place of the said [*first trustee*], or of any trustee to be hereafter appointed in his place, shall be exercisable by the vendor, his executors, administrators or assigns, and the power of appointing a new trustee in the place of the said [*second trustee*], or of any trustee to be hereafter appointed in his place, shall be exercisable by the purchaser, his executors, administrators or assigns.

Indemnity not to affect covenants for title.

8. Nothing herein contained shall operate to prejudice or affect the covenants for title by the vendor, contained or implied in the said indenture of even date herewith, or any liability of the vendor, under or by virtue of the same.

IN WITNESS, &c.

III. INDEMNITY *against a* RENTCHARGE *by a* GRANT *of a* POWER *of* ENTRY *on other* LANDS (*h*).

Parties.

THIS INDENTURE (*i*), &c., BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*],

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(*h*) Notice of this deed should be indorsed on the last conveyance of the hereditaments comprised in the schedule. As to entering on the register a notice of the power of entry in the case of registered land, see Land Transfer Act, 1875, s. 18 (d); L. T. Act, 1897, sched. I.; and L. T. R. 215. The indemnity is usually given in this form, but if desired, another rentcharge may be created on other land by way of indemnity, as in Key & Elph. 10th ed. p. 827, Prec. III.

(*i*) Stamp, 10*s*.

III. GRANT OF POWER OF DISTRESS BY WAY OF INDEMNITY.

of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the vendor, being seised in fee simple in possession of a certain messuage, farm, lands, and hereditaments, called ——, subject to and charged with the payment of a yearly rentcharge of £——, created by an indenture dated, &c., and to the powers and remedies thereby given to the said —— for securing the same, has lately agreed to sell to the purchaser a certain close, containing by admeasurement 10 acres, or thereabouts, parcel of the said farm, and the inheritance thereof in fee simple, free from all incumbrances, at or for the price or sum of £——.

Recitals: of agreement for sale;

AND WHEREAS in pursuance of the said agreement, and for the consideration aforesaid, by an indenture bearing even date with, but executed before the execution of these presents, and made between the vendor, of the one part, and the purchaser, of the other part, the same close or parcel of land and hereditaments have been conveyed unto and to the use of the purchaser, his heirs and assigns.

of conveyance to purchaser;

AND WHEREAS, upon the treaty for the purchase aforesaid, it was agreed between the parties hereto, that the vendor should give to the purchaser such indemnity as is hereinafter expressed and contained in respect of the said rentcharge.

of agreement to give indemnity

Testatum.

NOW THIS INDENTURE WITNESSETH, and it is hereby agreed and declared, as follows:—

Covenant that rentcharge shall be exclusively charged on other premises.

1. The vendor hereby covenants with the purchaser in manner following, that is to say: That the said yearly rentcharge of £—— shall henceforth be exclusively charged upon and issuing out of the farm and hereditaments mentioned in the schedule hereto, being so much of the said messuage, farm, and lands called ——, as is not comprised in the said indenture of even date herewith.

2. If, at any time or times hereafter, during the lifetime or within twenty-one years after the death of the survivor of the issue now living of his late Majesty King Edward the Seventh (*ii*), any distress, entry, claim, or demand shall be made or levied in or upon any part or parts of the lands and hereditaments comprised in the said indenture of even date for recovering payment of the said yearly rentcharge of £——, or any part thereof, then and in every such case it shall be lawful for the said [*grantee*], his heirs and assigns, to enter into and retain possession, and take the rents

(*ii*) It is safer to insert these words in order to avoid a perpetuity.

and profits of the hereditaments mentioned in the schedule hereto, or any part thereof (such entry, when made, to be without impeachment of waste), until and to the intent, that, by the means aforesaid, the purchaser, his heirs and assigns, shall be fully paid and satisfied all sums of money, costs, damages, and expenses which he or they shall or may have incurred or sustained by reason of such distress, entry, claim, or demand as aforesaid, or any action or proceeding for recovering payment of the said yearly rentcharge of £——, or otherwise in relation thereto; And also the costs and expenses attending any entry or other proceeding made or taken under the authority of these presents. III. Grant of power of distress by way of indemnity.

In witness, &c.

The Schedule above referred to.

IV. Deed *of* Indemnity *by a* Vendor *to a* Purchaser *in respect of the* Title *where* Investigation *of the* Title *is dispensed with* (*k*).

THIS INDENTURE (*l*), made the —— day of ——, 19—, Between [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part. Parties.

Whereas by an indenture of even date with these presents, and made between [*parties*], for the consideration therein mentioned, the vendor has conveyed a messuage, farm, and lands, known as ——, situate, &c., comprising —— acres, or thereabouts, to the use of the purchaser, his heirs and assigns. Recital of conveyance to purchaser;

And whereas the purchaser agreed to dispense with the investigation of the title to the said premises, and the purchase thereof was completed on condition that the vendor should give an absolute guarantee of such title, and for that purpose should enter into absolute covenants for the title to and further assurance of the said premises in manner hereinafter expressed, which covenants are to override and be in nowise controlled by the qualified or restricted covenants implied in the said indenture of even date herewith. of agreement to give absolute covenants for title.

(*k*) This precedent can be adapted to the case of a defective title by reciting the defect and the agreement to complete upon the title being guaranteed and absolute covenants for title given.

(*l*) Stamp, 10*s*.

IV. INDEMNITY BY VENDOR TO PURCHASER.

Covenants for title.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement and condition, and in consideration of the premises, the vendor hereby covenants with the purchaser, his heirs and assigns, that in addition to the qualified or restricted covenants by the vendor for the title to and further assurance of the said premises, which are implied in the said conveyance of even date herewith, the same or the like covenants shall be deemed to be thereby implied on the part of the vendor, but without any qualification or restriction as regards the persons to whose acts, defaults, or omissions such covenants extend.

In witness, &c.

LEASES.

PRELIMINARY NOTE.

Stamp Duties.

1. Under the Stamp Duty Act, 1891, the stamp duty on leases is regulated by a graduated scale set out in the schedule to the Act, under the heading "Lease or Tack," which is as follows:—

Lease or Tack—	£	s.	d.	
(1.) For any definite term not exceeding a year:				
Of any dwelling-house or part of a dwelling-house at a rent not exceeding the rate of 10*l.* per annum	0	0	1	
(2.) For any definite term less than a year:				
(a) Of any furnished dwelling-house or apartments where the rent for such term exceeds 25*l.*	0	2	6	
(b) Of any lands, tenements, or heritable subjects except or otherwise than as aforesaid				The same duty as a lease for a year at the rent reserved for the definite term.
(3.) For any other definite term or for any indefinite term:				
Of any lands, tenements, or heritable subjects—				
Where the consideration, or any part of the consideration, moving either to the lessor or				

to any other person, consists of any money, stock, or security: £ s. d.

In respect of such consideration . . . } The same duty as a conveyance on a sale for the same consideration.

Where the consideration or any part of the consideration is any rent:

In respect of such consideration:

If the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate:

	If the term does not exceed 35 years, or is indefinite.			If the term exceeds 35 years, but does not exceed 100 years.			If the term exceeds 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.
Not exceeding 5*l.* per annum	0	0	6	0	3	0	0	6	0
Exceeding—									
5*l.* and not exceeding 10*l.*	0	1	0	0	6	0	0	12	0
10*l.* „ „ 15*l.*	0	1	6	0	9	0	0	18	0
15*l.* „ „ 20*l.*	0	2	0	0	12	0	1	4	0
20*l.* „ „ 25*l.*	0	2	6	0	15	0	1	10	0
25*l.* „ „ 50*l.*	0	5	0	1	10	0	3	0	0
50*l.* „ „ 75*l.*	0	7	6	2	5	0	4	10	0
75*l.* „ „ 100*l.*	0	10	0	3	0	0	6	0	0
For every full sum of 50*l.*, and also for any fractional part of 50*l.* thereof.	0	5	0	1	10	0	3	0	0

(4.) Of any other kind whatsoever not hereinbefore described . . . . . £ s. d. 0 10 0

By sect. 75 of the Finance (1909-10) Act, 1910, the stamp duties chargeable under the above heading are doubled, except in the case of leases or tacks, on which a fixed duty of a penny is chargeable under that heading; but sect. 15 of the Revenue Act, 1911, exempts the consideration (other than rent) from the increased duty where such consideration does not exceed in amount or value 500*l.*

2. Sect. 75 (1) of the Stamp Act, 1891, provides that an agreement for a lease or tack or letting for a term not exceeding thirty-five years or for an indefinite term, is to be charged with the same duty as a lease or tack for the same consideration and term; but (sub-sect. 2) that a lease or tack made subsequently to and in

conformity with such an agreement duly stamped is to be charged with the duty of 6*d*. only.

3. Under sect. 76 of the same Act, where the consideration or part of the consideration for a lease, or agreement for a lease, consists of produce or goods, the lease or agreement is chargeable with *ad valorem* duty on the value of such produce or goods.

4. A lease, tack, or agreement is not to be charged with duty in respect of penal rents, or by reason that it is made in consideration of the surrender of an existing lease, tack, or agreement (sect. 77 (1)); or in respect of further consideration of a covenant for improvement of or addition to the property or any covenant relating to the matter of the lease (s. 77 (2)). And the duty is restricted to 35*s*. in the case of a lease for lives or for a term determinable with lives not exceeding three, and of a lease by an ecclesiastical corporation, aggregate or sole, for a term not exceeding twenty-one years (sect. 77 (3)).

5. Sect. 78 provides that the duty may be denoted by an adhesive stamp in the case of a lease (a) of a house for a term not exceeding a year, and at a rent not exceeding 10*l*., and (b) of a furnished dwelling-house or apartments for less than a year.

Increment Value Duty.

Increment value duty is payable under the Finance (1909-10) Act, 1910, s. 1 (a), on the grant of any lease exceeding fourteen years. The mode of payment of this duty is regulated by the Increment Value Duty Rules. Rule 7 provides that an agreement for a lease must be presented to the Inland Revenue authorities without waiting for the lease.

For the purposes of Part I. of the Act, "lease" includes "underlease," but not a mortgage term so long as the equity of redemption subsists; and the "term" of a lease includes the period for which it may be renewed under an obligation to renew, and in the case of a lease for a life or lives shall be deemed to be a number of years equal to the mean expectation of the life of the persons or the youngest of the persons for whose life or lives the lease is granted; and a lease renewed in pursuance of such an obligation shall not on its renewal be deemed to be determined (sect. 41). Neither increment value duty nor mineral rights duty can be imposed on the lessee: see sects. 20 (4), 21 (2), 22 (5).

Reversion Duty.

Reversion duty is payable under the same Act, sect. 13, on the determination of any lease on the benefit accruing to the lessor at the rate of 1*l.* for every 10*l.* of such benefit. Sub-sect. (2) states how the value of the benefit accruing to the lessor shall be ascertained. By sect. 14 (2) agricultural land and leases granted originally for a term not exceeding twenty-one years are exempted from reversion duty.

Mineral Rights Duty.

As to this duty, see sects. 20 to 24 of the Finance (1909-10) Act, 1910, and sect. 11 of Finance Act, 1912.

The Conveyancing Acts.

Interpretation.

In the interpretation clause, sect. 2 (v) of the Conveyancing Act, 1881, "conveyance" includes "lease," but sub-sect. (5) of sect. 7 of the Act excludes a lease at a rent from that section which relates to implied covenants.

General words.

Under sect. 6 (1) general words are included in leases in the absence of a contrary intention (sub-sect. (4)). (See *Pollard* v. *Gare*, [1901] 1 Ch. 834.)

Title deeds.

Sect. 9, as to acknowledgments and undertakings as to title deeds, is general in terms and applies to leases.

Rent and covenants to run with the reversion.

Sect. 10 (1) makes the rent and the benefit of the lessee's covenants run with the reversion, notwithstanding severance of that reversion; and sect. 12 provides that on severance of the reversion the conditions and the right of re-entry in the lease shall be apportioned to the severed parts; whilst sect. 11 makes the obligation of the lessor's covenants to run with the reversion on severance. Sect. 2 of the Conveyancing Act, 1911, provides that sect. 10 of the Act of 1881 shall apply to conditions broken before the severance of the reversion.

Intending lessee excluded from calling for title to reversion.

Sect. 13 of the Conveyancing Act, 1881, excludes an intended lessee on a contract for a sublease from calling for the title to the reversion. This is an extension of sect. 2, rule (1) of the Vendor and Purchaser Act, 1874, which excluded an intended lessee from calling for the freehold title. (See also sect. 3 (1) of the Conveyancing Act, 1881.)

Relief against forfeiture under sect. 14.

Sect. 14 of the Conveyancing Act, 1881, amended by sect. 2 of the Conveyancing Act, 1892, places restrictions on the lessor's right of re-entry or forfeiture for breach of covenants, and gives relief to the lessee upon certain terms. These sections are exhaustively discussed in the notes to Wolstenholme's Conveyancing, &c. Acts, 10th ed., p. 59 *et seq.*; and see *ibid.*, p. 186. As to what is a valid and sufficient notice under this section, see *Jolly* v. *Brown*, [1914] 2 K. B. 109.

Leases by mortgagor or mortgagee in possession.

Under sect. 18 of the Act of 1881, either a mortgagor "in possession" or a mortgagee "in possession" may grant an agricultural or occupation lease not exceeding twenty-one years, or a building lease not exceeding ninety-nine years. Sect. 3 of the Act of 1911 enables a mortgagor or mortgagee in possession to accept surrenders with a view to granting leases for the purposes of the latter section. "Mortgagor" does not, for the purpose of this section, include an incumbrancer deriving title under an original mortgagor. (Sub-sect. 10.)

Sect. 55 of the Act of 1881 makes receipts in the body of a deed, or indorsed thereon, evidence of payment in favour of a subsequent purchaser.

The Settled Land Acts.

Definitions, &c.

As to (1) the definition of "settlement" and "tenant for life" under the Settled Land Act, 1882; (2) the powers given to "limited" owners under that Act; (3) the exercise of the powers of the Act on behalf of infants and lunatics, and by married women; and (4) notices under the Act, see the Preliminary Note to Conveyances on Sale, *ante*, pp. 309 *et seq.*

Terms and requirements of leases.

By sect. 6 of the Settled Land Act, 1882, a tenant for life may grant a lease of settled land or any easement, right, or privilege for a term not exceeding, for a building lease, ninety-nine years; for a mining lease, sixty years; for any other lease, twenty-one years.

By sect. 7, sub-sect. (1), every lease must be by deed, and must take effect in possession not later than twelve months after its date, must reserve the best rent regard being had to any fine or other circumstances (sub-sect. 2), and must contain a covenant by the lessee to pay the rent, and a power of re-entry (sub-sect. 3), and a counterpart must be delivered to the tenant for life (sub-

sect. 4). Sects. 8 and 9 contain regulations respecting building and mining leases. For definitions of "building purposes" and "building lease," see sect. 2 (10) (iii); of "rent" and "mines," see sect. 2 (10) (ii) and (iv); and see, too, Settled Land Act, 1890, s. 8, which provides that in a mining lease the rent may vary with the price of minerals.

Building and mining leases.

Under sect. 10 the Court may authorise building or mining leases for longer terms and on other conditions than those specified in the Act under circumstances therein mentioned.

Court may extend terms and conditions of building and mining leases.

Sect. 11 provides for the setting aside part of the mining rent as capital—where the tenant for life is impeachable for waste in respect of minerals three-fourths, otherwise one-fourth.

Sect. 12 extends the tenant for life's powers of leasing to granting (i) a lease for giving effect to a previous contract by a predecessor, (ii) a lease under a covenant of renewal, and (iii) a lease for confirming a void or voidable lease.

Extension of powers of leasing.

Sect. 13 enables the tenant for life to accept a surrender of lease. When the life estate is in mortgage, the consent of the mortgagee is required (sect. 50 (3)), and the surrender must be to him (*Robbins* v. *Whyte*, [1906] 1 K. B. 125), except in cases where sect. 3 of the Conveyancing Act, 1911, enables the tenant for life as mortgagor in possession to accept a surrender without such consent.

Power to accept surrenders.

The principal mansion house, pleasure grounds, and park and lands (if any) usually occupied therewith cannot be leased without the consent of the trustees of the settlement or an order of the Court. (Settled Land Act, 1890, s. 10.)

Principal mansion house, &c.

Sect. 16 of the 1882 Act enables the tenant for life to lay out streets, gardens, and other open spaces in connection with a building lease; and

Power to lay out streets, &c.

Sect. 17 of the same Act provides for the separate dealing with the surface and minerals.

Separate dealing with surface and minerals.

Fines and the proportion set aside as capital of mining rent must be invested or applied in accordance with the provisions of sects. 21 and 25 of the Act of 1882.

Capital money.

A lessee dealing in good faith with the tenant for life is protected by sect. 54 of the Act of 1882.

Protection of lessee.

I. AGREEMENT FOR LETTING FURNISHED LODGINGS.

PRECEDENTS.

Leases, &c. (Houses).

I. AGREEMENT *for the* Letting *of* Furnished Lodgings *with* Attendance, *&c., from* Month *to* Month *or* Week *to* Week (*a*).

AN AGREEMENT (*b*), made the —— day of ——, 19—,

Parties. Between [*landlord*], of, &c. (hereinafter referred to as "the landlord"), of the one part; and [*tenant*], of, &c. (hereinafter referred to as "the tenant"), of the other part. WHEREBY IT IS AGREED as follows:—

Agreement. 1. The landlord shall let, and the tenant shall take, All that the ground floor and the two front attics, with the back coal-cellar, of the dwelling-house of the landlord, situate in —— street, in the parish of ——, &c. together with the use of the front kitchen and the back yard, with the appurtenances (*c*), in common with the occupier for the time being of the other part of the said dwelling-house (*d*); together with the fixtures, fur-

Parcels;

with furniture, &c. in schedule.

(*a*) As to the implied warranty in the case of a tenancy of a furnished house that it is fit for habitation, see *Smith* v. *Marrable*, 11 M. & W. 5; *Wilson* v. *Finch-Hatton*, 2 Ex. D. 336. There is no such warranty in the case of an unfurnished house (see *Manchester, &c. Co.* v. *Carr*, 5 C. P. D. 507; or apparently in the case of a house let partly furnished: *Chester* v. *Powell*, (1885) W. N. 67; 52 L. T. 722), except in the case of artisans' dwellings: 53 & 54 Vict. c. 70, s. 75; and see Housing of the Working Classes Act, 1903, s. 12; *Walker* v. *Hobbs*, 23 Q. B. D. 458; Housing, Town Planning, &c. Act, 1909, ss. 14, 15; *Ryall* v. *Kidwell & Son*, [1914] 3 K. B. 135.

Stamp. (*b*) Stamp. 5*s.*, if the rent exceeds 25*l.* for the term. If under 25*l.*, then the same duty as a lease for a year at the rent reserved for the definite term: see Preliminary Note, *ante*, p. 506.

(*c*) A lodger has, in the absence of stipulation to the contrary, the right to use the door bell, knocker, skylight on the staircase, and watercloset: *Underwood* v. *Burrows*, 7 C. & P. 26.

Gas. (*d*) If it be so agreed, add here—

"including gas light which is to be supplied by the landlord."

Liberty to put name on door and to fix a bell. *Or*, "And liberty to put the name and profession of the tenant on the front door of the said dwelling-house, in such characters, manner, and form as he shall think proper; And also to place and fix a bell with wires extending to either of the said front attics, with the words 'night bell' affixed near the handle, on the outside of the door of the said dwelling-house."

niture, utensils, and things, particularly mentioned in the schedule hereto, and also such attendance as is hereinafter mentioned, from the —— day of ——, 19—, from month to month [*or*, from week to week], until one of the parties hereto shall give to the other in writing one month's [*or*, one week's] notice to quit, such notice to expire on the — — day of any month [*or*, on any Saturday]; at the rent of £—— for every calendar month [*or*, week], to be paid at the end of every such month [*or*, payable on the — — day of every month, *or*, to be paid on Saturday in each week] during the tenancy.

I. AGREEMENT FOR LETTING FURNISHED LODGINGS.

Term.

Rent.

2. The tenant will pay to the landlord the rent hereby reserved in manner aforesaid, and at the end of the tenancy will leave the premises and the said fixtures, furniture, utensils, and things, in as good state and condition as the same now are, reasonable wear and tear and damage by fire excepted; AND ALSO, will replace such part of the glass, china, and earthenware as shall be broken or missing, with other articles of the same pattern and of equal value.

After notice, tenant to quit and leave the furniture, &c. in good condition, and to replace broken glass; &c.

3. The tenant will not assign, underlet, or part with his interest hereunder without the landlord's consent in writing.

4. The landlord will pay [the superior rent and] all rates, taxes, and impositions of every description, and insurance and other outgoings payable in respect of the premises during the tenancy, except gas and electricity, which shall be paid by the tenant; and will during the tenancy keep the premises and furniture in good repair and condition, and replace such part of the fixtures and furniture as shall by reasonable wear and tear be rendered unfit for use.

Landlord to repair premises and furniture.

5. The landlord will not, during the tenancy, do or permit, or suffer to be done in or upon the said dwelling-house and premises, anything of a noisy or offensive nature.

6. The landlord will find and provide the tenant with all necessary and proper attendance, including cooking and boot and shoe cleaning, and also will find and provide him with proper and sufficient linen, china, glass, knives, silver or plated forks and spoons, and other necessary household articles to enable him to reside comfortably in the said apartments and premises during the tenancy.

Landlord to provide attendance and linen, plate, &c.

7. If at any time during the tenancy, the tenant shall be

Tenant if disturbed, &c.

I. AGREEMENT FOR LETTING FURNISHED LODGINGS.

may determine tenancy.

annoyed or disturbed by anything of a noisy or offensive nature, contrary to the stipulation hereinbefore contained, or if it shall appear that there is any embarrassment on the part of the landlord, or any danger of a distress for rent, rates, or taxes, or of an execution against the goods of the landlord, then and in any such case it shall be lawful for the tenant by notice in writing to determine the tenancy, and thereupon forthwith to quit possession of the premises, anything to the contrary herein contained notwithstanding; and in such case the tenant shall be liable to pay only a proportional part of the rent up to the day of his so quitting the premises: PROVIDED, nevertheless, that the tenant shall not hereby be deprived of the protection of the provisions of the Law of Distress Amendment Act, 1908, or (if and so far as such Act does not apply) of the Lodgers' Goods Protection Act, 1871 (*e*).

Power of re-entry.

8. If any monthly [*or*, weekly] payment of rent shall be in arrear for more than —— days, it shall be lawful for the landlord

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The Law of Distress: Lodgers' Goods Protection Act, 1871.

(*e*) As to the protection of the goods of lodgers from distress for rent due by the letter of the lodgings to his superior landlord, see now the Law of Distress Amendment Act, 1908, which by sect. 8 repeals the Lodgers' Goods Protection Act, 1871, "wherever and so far as" the 1908 Act applies. As to the meaning of lodger, see *Ness* v. *Stephenson*, 9 Q. B. D. 245; and *Phillips* v. *Henson*, 3 C. P. D. 26. See also *Morton* v. *Palmer*, 51 L. J. (Q. B. D.) 7; and *Bradley* v. *Baylis*, 8 Q. B. D. 195, a registration case. The following is suggested as a form of declaration under the Act (which need not be a statutory declaration: see *Rogers, &c. Co.* v. *Martin*, [1911] 1 K. B. 19):—

Form of declaration.

To Mr. [*landlord*].

I [*lodger*], of &c., hereby declare that [*mesne tenant*] has no right of property or beneficial interest in the furniture, goods and chattels, an inventory whereof is hereunder written; but that such furniture, goods and chattels are my property [*or* in my lawful possession]. And further, that I now owe to the said [*mesne tenant*] £—— on account of rent for the month expiring —— last, and that a further instalment of rent of the same amount will become due on the —— day of —— next and on the —— day of each succeeding month during the continuance of the tenancy from month to month under which I now occupy the premises. And I hereby undertake to pay to you the rent so due or to become due as aforesaid until the arrears of rent due to you have been paid off.

The Inventory above referred to.

Dated the —— day of ——, 19—. A. B.

to re-enter on the premises, and forthwith to determine the tenancy.

I. AGREEMENT FOR LETTING FURNISHED LODGINGS.

As WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

II. AGREEMENT (*f*) *for* TENANCY *of a* HOUSE *and* GARDEN, *with use of* FURNITURE, PLATE, LINEN, *&c.* (*g*) *for* SIX MONTHS. (*A* CONCISE FORM.)

AN AGREEMENT (*h*), made the —— day of ——, 19—, BETWEEN [*landlord*], of, &c. (hereinafter called "the landlord"), of the one part, and [*tenant*], of, &c. (hereinafter called "the tenant"), of the other part: WHEREBY the landlord agrees to let and the tenant agrees to take ALL THAT house situate and being No. —, in —— Crescent, ——, in the county of ——, with the offices, stabling, garden, and appurtenances thereto belonging, together with the use of the fixtures, furniture, plate, linen, utensils, and effects mentioned in the schedule hereto; AND ALSO with the right to such produce of the garden as the tenant shall require for the use of himself and his household and establishment; AND ALSO with such attendance as is hereinafter mentioned, for the term of six calendar months commencing from the —— day of —— next, at a rent of £—— for the said term, payable in advance, as to one moiety thereof, upon the execution of this agreement, and as to the remaining moiety thereof, immediately on the expiration of three calendar months of the said term. The landlord agrees to pay all rates, taxes, and assessments, except gas, electricity, and water rates, and to execute at his own cost all necessary repairs of the premises (except as herein-

Parties.

Agreement.

Parcels.

Landlord agrees to pay taxes, &c., to repair, and provide servants.

(*f*) This form is adapted to the letting of houses at seaside and other resorts "for the season." As the furniture, &c. belongs to the landlord, he has practically no remedy by distress; it is usual to require the rent to be paid in advance, as provided in the text.

Payment of rent in advance.

(*g*) As to the implied warranty by the landlord on letting a furnished house, that the house is fit for the occupation of the tenant, see *ante*, p. 512, note (*a*).

Warranty that house is fit for occupation.

(*h*) Stamp, 5*s*., if the rent exceeds 25*l*. for the term: see *ante*, p. 506.

Stamp.

II. AGREEMENT FOR LETTING FURNISHED HOUSE FOR A SHORT PERIOD.

after mentioned) during the term, upon being requested by the tenant so to do: And to leave or provide —— servants who shall reside in the house and attend upon the tenant, and also a gardener, and to pay the wages of such indoor servants and gardener. The tenant agrees to pay the said rent in manner aforesaid, and to leave the premises, including the said fixtures, furniture, plate, linen, utensils, and effects, in as good state and condition in all respects as the same now are, reasonable wear and tear excepted, and to replace such of the same respectively as shall be broken, damaged, or missing, with other articles of the same pattern and equal value; And to permit the said indoor servants to reside in the house, and to provide them with proper and sufficient board and nourishment (including beer, or an allowance of —— per month respectively in lieu thereof); And to bear all expenses of washing and mending all table or house linen which he shall use; And not to assign or underlet the premises, or any part thereof, without the previous consent of the landlord. Provided that if there shall be any breach by the tenant of the conditions herein contained the landlord may re-enter upon any part of the premises in the name of the whole, and determine the tenancy without prejudice to his other remedies.

Tenant agrees to deliver possession at end of tenancy, to replace breakages, to provide board for servants, &c.

Proviso for re-entry.

As witness, &c.

The Schedule above referred to.

III. AGREEMENT *for the* Letting *of a* Cottage *from* Year *to* Year.

AN AGREEMENT (*i*), made the —— day of ——, 19—, Between [*landlord*], of, &c. (hereinafter called "the landlord"), of the one part, and [*tenant*], of, &c. (hereinafter called "the tenant"), of the other part.

Parties.

1. The landlord hereby agrees to let and the tenant hereby agrees to take All that cottage, situate in the parish of ——, in the county of ——, formerly in the occupation of ——, together with the garden (*ii*) and appurtenances thereto belonging, for the

Parcels.

Stamp.

(*i*) Stamp, *ad valorem* on yearly rent: *ante*, p. 506.

(*ii*) As to compensation for crops, &c., see Allotments and Cottage Gardens Compensation Act, 1887, ss. 5 and 6.

III. AGREEMENT FOR LETTING A COTTAGE FROM YEAR TO YEAR.

Term.

term of one year certain from the —— day of ——, 19—, and afterwards from year to year, determinable, nevertheless, as is hereinafter mentioned, at the yearly rent of £——, payable quarterly on the usual quarter days in each year, the first payment to be made on the —— day of —— next, and the last payment to be made in advance one calendar month before the expiration of the tenancy (*k*). The said rent to be paid clear of all deductions, except for [land-tax and] property-tax (*kk*).

Tenant to pay rent, taxes, &c.

2. The tenant shall pay the said rent in manner aforesaid, and also all existing or future taxes, rates, assessments, and outgoings of every description (except as aforesaid) for the time being payable by the tenant in respect of the premises.

To repair.

3. The tenant shall whitewash the cottage when required, and shall keep all cesspools and drains well cleansed, and shall keep the premises (including fixtures, but excepting the roof and outside walls) in good and tenantable repair, reasonable wear and tear excepted.

Not to remove fixtures.

4. The tenant shall not remove any fixtures belonging to him without first giving the landlord the option of purchasing the same at a valuation; and in case of removal of any such fixtures will repair all damages occasioned thereby.

To cultivate garden.

5. The tenant shall cultivate the garden and orchard in a proper manner, and shall prune and preserve all fruit trees, and shall replace any that may perish through decay or accident, and shall leave as well those now growing as any hereafter to be planted, in good order and condition.

Not to assign or sublet.

6. The tenant shall not assign or sublet the premises, or any part thereof, nor take or retain any lodger, or allow any married son or daughter to reside with him, nor keep a shop, without the written consent of the landlord or his agent duly authorised.

To leave premises in repair.

7. The tenant on the expiration or sooner determination of the tenancy shall deliver up the premises in such good and tenantable repair, order, and condition as aforesaid.

Rent in advance.

(*k*) A stipulation for the payment of the last quarter's rent in advance will enable the landlord to distrain for it before the expiration of the tenancy: see *Witty* v. *Williams*, 12 W. R. 755; 4 N. R. 138.

Property tax.

(*kk*) The lessor is bound to pay the landlord's property tax: Income Tax Act, 1842, s. 73; *Lamb* v. *Brewster*, 4 Q. B. D. 607; see also *Re Sturmey Motors, Ltd.*, [1913] 1 Ch. 16.

III. AGREEMENT FOR LETTING A COTTAGE FROM YEAR TO YEAR.

8. The landlord and his agents may have access to the premises at all reasonable times to view the state and condition of the same.

Landlord to have access.

9. The tenancy shall be determined at any time after the expiration of the first year thereof on any quarter day upon three months' previous notice in writing by either party.

Determination of tenancy.

10. PROVIDED ALWAYS, that if and whenever any part of the said rent shall be in arrear for —— days, whether legally demanded or not, or if and whenever there shall be a breach of any of the tenant's agreements the landlord may enter upon any part of the premises in the name of the whole and thereupon the tenancy shall determine.

Power of re-entry.

AS WITNESS, &c.

IV. AGREEMENT *for a* LEASE *or* UNDERLEASE *of a* PRIVATE HOUSE *in* LONDON, *with or without* FURNITURE (*l*).

AN AGREEMENT (*m*), made the —— day of ——, 19—, BETWEEN A. B., of, &c. (who, and his heirs and assigns (*n*), unless the contrary appears, are hereinafter called "the lessor"), of the one part; and C. D., of, &c. (who, and his executors, administrators, and assigns, unless the contrary appears, are hereinafter called "the lessee"), of the other part.

Parties.

1. The lessor shall before the —— day of ——, 19—, grant and the lessee shall accept a lease of (*o*), ALL THAT messuage,

Parcels.

(*l*) This form should only be used where the lease cannot be immediately executed as there are objections to letting tenants into possession under agreements of this nature, the tenant being virtually tenant for the whole term: see *Walsh* v. *Lonsdale*, 21 Ch. D. 9. The Conveyancing Act, 1892, s. 5, makes sect. 14 of the Conveyancing Act, 1881, apply to an agreement for a lease or underlease where the tenant is entitled to have such lease or underlease granted. If the term exceeds three years the agreement must be under seal.

Stamp.

(*m*) Stamp, *ad valorem* on yearly rent reserved: see *ante*, p. 506.

(*n*) If the lessor has only a term for years in the premises, say, "his executors, administrators, and assigns."

Underlease.

(*o*) In the case of an underlease, say, "without calling for the title of the lessor, accept an underlease." Notwithstanding the provisions as to dispensing with production of the

IV. AGREEMENT FOR A LEASE OF A HOUSE IN TOWN.

tenement, or dwelling-house, with the coach-house, stables, and garden behind the same, situate, &c., with the appurtenances thereunto respectively belonging (*p*), from the —— day of ——, 19— (*q*), for the term of —— years, at the yearly rent of £——, payable quarterly, clear of all taxes, rates, impositions, outgoings, and assessments whatsoever, whether parliamentary, parochial, or local, or otherwise, now or during the said term payable by landlord or tenant in respect of the said premises, or any part thereof (*r*), except the land tax and landlord's property tax, the first payment thereof to be made on the —— day of ——, 19—; AND ALSO, a proportional sum for the period, if any, which may elapse between any quarterly day of payment and the determination of the said term, if the same shall be determined under the proviso for re-entry hereinafter mentioned, such proportional sum to become due and be paid immediately on the determination of the term (*s*).

Term.

Rent.

2. In such indenture of lease shall be contained covenants on the part of the lessee, to pay the said yearly rent accordingly; AND ALSO, to pay all existing and future taxes, rates, duties, and assessments whatsoever in respect of the premises; AND ALSO once in every three years to paint twice over with good oil and colours all the outside wood, iron, and stone work of the said messuage; AND ALSO, once in every seven years to paint twice

Covenants by the lessee: to pay rent; to pay taxes, rates, &c.; to repair;

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lessor's title contained in the Vendor and Purchasers Act, 1874, s. 2, and in the Conveyancing Act, 1881, s. 3, a special stipulation is necessary to preclude an *underlessee* from calling for the title to the leasehold reversion: *Stranks* v. *St. John*, L. R. 2 C. P. 376; *Gosling* v. *Woolf*, [1893] 1 Q. B. 39; 41 W. R. 106; 68 L. T. 89.

(*p*) If furniture be leased with the house, say,

"together also with the use of all and singular the furniture, in and belonging to the said messuage, tenement, or dwelling-house mentioned and comprised in the schedule or inventory hereunder written, and signed by the said parties hereto."

Furniture.

(*q*) The day for the commencement of the term should be stated: see *Marshall* v. *Berridge*, 19 Ch. D. 233.

(*r*) See *Foulger* v. *Arding*, [1902] 1 K. B. 700; *Greaves* v. *Whitmarsh, Watson & Co.*, [1906] 2 K. B. 340.

(*s*) See *Re United Club and Hotel Co.*, W. N. (1889) p. 67; 60 L. T. 665.

IV. AGREEMENT FOR A LEASE OF A HOUSE IN TOWN.

over with good oil and colours all the inside wood, iron, and stone work usually painted, and in like manner to grain all such parts of the woodwork as are now grained; And also, to keep the said messuage, or dwelling-house and premises (*t*), during the said term, in as good condition as the same are now in, and in such condition to deliver up the same, together with the several fixtures to the premises belonging, at the end or other determination of the said term, reasonable use and wear thereof only excepted; And also, to permit the landlord on notice at all reasonable times to enter and inspect the premises, and to repair if necessary; And also, to keep the premises insured (*u*) in the sum of £—— at the least, And to produce the policies of insurance and receipts for premiums when required by the landlord; And not at any time or times during the said term to remove, or cause or suffer to be removed from or out of the said messuage, tenement, dwelling-house and premises, any of the said [furniture or] fixtures on any account whatsoever; And also, not to assign or underlet the premises, or any part thereof, nor to make any alterations thereof, without the previous consent in writing of the lessor; And also, not to use the premises, or permit or suffer them to be used for any purpose except that of a private dwelling-house; And not to exhibit on any part of the premises any notice or statement of any art, profession, trade, or business, or that any part less than the whole of the premises is or will be to let; And not to cause or permit to be held on the premises any sale by auction without the previous consent in writing of the landlord; And also, a proviso for re-entry on the premises on non-payment of the said yearly rent by the space of twenty-one days next after the same shall become due, or on non-performance of any of the covenants to be contained in the said lease, and on the lessee's part

to deliver up at end of term;

not to remove fixtures;

not to assign lease or underlet without consent;

not to exercise offensive trades.

Power of re-entry.

Furniture.

(*t*) If furniture be leased with the house, say,

"And also, the furniture mentioned and comprised in the schedule or inventory hereunto annexed."

Insurance of furniture.

(*u*) If furniture be leased with the house, say,

"insured in the sums following, that is to say, the house and the appurtenances thereof (except the furniture) in the sum of £——, and the furniture in the sum of £——."

IV. AGREEMENT FOR A LEASE OF A HOUSE IN TOWN.

to be performed (x); And all (y) other usual (z) and reasonable covenants, including the usual covenant on the part of the lessor, for quiet enjoyment by the lessee.

Lessee covenants to accept lease, and pay the law charges.

3. The lessee will accept such lease as aforesaid, upon the terms and conditions above specified, and execute a counterpart thereof; And also, will pay the expenses of these presents and of a counterpart hereof, and of such lease and a counterpart thereof, to be prepared by the solicitor of the lessor.

Agreement not to operate as demise.

4. This agreement shall not, nor shall anything herein contained operate or be deemed to operate as an actual or present demise of the said premises, or to give to the lessee any legal estate or interest therein, until the lease hereby provided for shall be actually executed.

In witness, &c.

The Schedule above referred to.

Rent to be suspended or abated in case of fire, &c.

(x) If the agreement be that the rent shall be suspended or abated in case of fire, &c. until the premises are restored by the landlord, omit the proviso for insurance, &c. by the tenant, and say,

"And also, a proviso for the suspension or abatement of the said rent during such time as the premises, or any part thereof, shall remain useless, by reason of fire, storm, or tempest, the same to be referred to arbitration, or arbitration and umpirage, if any dispute should arise respecting the time or proportion of such suspension or abatement."

Lessor to rebuild in case of fire, &c.

"And also, a covenant on the part of the lessor to rebuild or repair, in a proper and workmanlike manner, as soon as conveniently may be, such part of the premises as shall be damaged or destroyed by fire, storm, or tempest: And it is hereby agreed, that if the premises shall be destroyed, damaged, or injured by fire, or otherwise, before the commencement of the said term, this agreement shall nevertheless continue in force, and be carried into execution in the same manner as if such event had not taken place. The said lease shall also contain all other, &c."

Agreement to continue in force notwithstanding fire, &c. before commencement of term.

Underlease.

(y) If the lessor has only a term for years, say,

Such covenants as are in original lease.

"such other covenants (except the covenant for building) as are contained on the part of the lessee in the indenture of lease under which the lessor holds the said premises; And also, all"

(z) As to what are "usual" covenants, see Foa, Landlord and Tenant, 3rd ed. p. 376; *Lander and Bagley*, [1892] 3 Ch. 41.

V. AGREEMENT FOR LEASE OF A PUBLIC-HOUSE.

V. AGREEMENT *for a* LEASE *of a* PUBLIC-HOUSE *by a* BREWER.

Parties.

AN AGREEMENT (*a*), made this —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (hereinafter referred to as "the lessor"), of the one part, and [*lessee*], of, &c. (hereinafter referred to as "the lessee"), of the other part.

Parcels.

1. The lessor shall grant and the lessee shall accept a lease (*b*) of ALL THAT messuage and public-house known as the "Crown Inn," situate in —— Street, in the parish of ——, in the county of ——, with the appurtenances thereto belonging, from the ——

Term.

day of ——, for the term of twenty-one years, determinable at the end of the first seven or fourteen years at the option of the lessee, to be signified by not less than six calendar months' notice in writing to the lessor, at the yearly rent of £——, payable quarterly on the usual quarter days, the first payment to be made on the —— day of ——, clear of all existing and future taxes, rates, duties, impositions, outgoings, and assessments whatsoever, except landlord's property tax [and in consideration of a premium of £—— payable as hereinafter mentioned].

Form of lease.

2. The said lease and the counterpart thereof shall be prepared by Messrs. ——, the lessor's solicitors, and shall contain the several covenants and provisions, and be in the form [usually adopted by the lessor for such leases], a copy of which has been seen and signed as approved by the lessee, with such variations as the case may require. And the lessee shall pay the costs [not exceeding £——, exclusive of stamp duty] of and in relation to this agreement and the said lease.

Premium (*c*).

3. [The lessor hereby acknowledges that he has received from the lessee the sum of £——, part of the said premium, by way of deposit. And the lessee shall pay to the lessor £——, further part of the said premium, on the —— day of ——, and £——, the residue thereof, on the —— day of ——.

4. If the lessee shall fail to perform this agreement the said deposit shall be forfeited, and the lessee shall pay to the lessor the further sum of £—— as liquidated damages.]

AS WITNESS, &c.

Stamp.

(*a*) Stamp, *ad valorem* on yearly rent, and further duty as on a conveyance on sale for the same consideration as the premium: see *ante*, p. 506.

(*b*) See, as to an underlease, *ante*, Precedent IV., note (*o*).

(*c*) Clauses 3 and 4 will only be inserted if a deposit is paid.

VI. LEASE *of a* PUBLIC-HOUSE *by a* FIRM OF BREWERS. COVENANT *by* LESSEE *to* DEAL EXCLUSIVELY *with* LESSORS; *and other* SPECIAL COVENANTS.

VI. LEASE OF PUBLIC-HOUSE BY FIRM OF BREWERS.

Parties and interpretation clause.

THIS INDENTURE (*d*), made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c., and [*lessor*], of, &c., carrying on the trade or business of brewers at ——, in the county of ——, in partnership, under the style or firm of —— & Co. (who and their heirs and assigns are hereinafter, unless the contrary appears, called "the lessors"), of the one part; and [*lessee*], of, &c., licensed victualler (who and his executors, administrators, and assigns are hereinafter, unless the contrary appears, called "the lessee"), of the other part: WITNESSETH, as follows:—

Testatum.

1. In consideration of the sum of £——, upon the execution of these presents paid by the lessee to the lessors (the receipt whereof is hereby acknowledged), and also in consideration of the rents hereinafter reserved, and of the covenants and agreements on the lessee's part hereinafter contained, the lessors do, and each of them doth hereby, demise unto the lessee ALL THAT [*describe parcels, ante*, p. 522], Together with the fixtures and fittings particularly mentioned in the schedule hereto: TO HOLD the premises unto the lessee from the —— day of ——, 19—, for the term of —— years next ensuing: PAYING therefor yearly during the said term and so in proportion for any less period than a year, the rent of £——, to be paid without any deduction (except for landlord's property tax, and except such deductions as may be made under sect. 21 of the Licensing (Consolidation) Act, 1910, and except also the sum of £——, being the sum which it is hereby agreed the lessee shall be entitled to recover as a debt due from or deduct from any sum due to the lessors on account of any increase of duty payable in respect of the licence occasioned by the Finance (1909-10) Act, 1910) (*e*) by equal quarterly payments on the —— day of ——, 19—, &c., the first of such payments to be made on the —— day of ——, 19—, and the last payment to be made in advance —— calendar

Demise.

Parcels.

Habendum.

Reddendum of yearly rent.

(*d*) Stamp, *ad valorem* on rent, and also on amount of premium as on a conveyance by way of sale: see *ante*, p. 506. Stamp.

(*e*) As to deduction from rent, see the Licensing (Consolidation) Act, 1910, s. 21; see *London County Council* v. *Watney, Combe & Co.*, [1909] 1 K. B. 637; *Lord Llangattock* v. *Watney & Co.*, [1910] A. C. 394; *Knight* v. *City of London Brewery*, [1912] 1 K. B. 10. As to free houses, see sect. 2 of Finance Act, 1912; *Watney & Co.* v. *Berners*, [1913] 3 K. B. 427; *Bodega Co.* v. *Read*, [1914] W. N. 219.

VI. LEASE OF PUBLIC-HOUSE BY FIRM OF BREWERS.

months before the expiration of the said term, or immediately upon the sooner determination thereof under or by virtue of the proviso for re-entry hereinafter contained: AND ALSO PAYING, yearly during the said term, by way of further rent, the sum or sums of money which the lessors shall from time to time expend in pursuance of the covenant on their part hereinafter contained, in insuring and keeping insured the said messuage and the offices and outbuildings thereof, and the fixtures or fittings specified in the schedule hereto, and any fixtures or fittings which may during the continuance of this demise be added thereto or substituted therefor against loss or damage by fire, and in insuring the plate-glass windows and mirrors against damage by accident, as hereinafter mentioned; such further rent to be paid on demand on the quarterly day of payment of the said yearly rent of £ — next ensuing after the said sum or sums shall have been expended: AND ALSO PAYING, by way of further rent, the sum of £—— in any and every year during the said term in which the lessee shall buy, consume, sell, or dispose of, either directly or indirectly, or permit to be bought, consumed, sold, or disposed of, either directly or indirectly, in, upon, out of, or about the messuage or tenement and premises hereby demised, or any part thereof, any wine, brandy, rum, hollands, gin, shrub, beer, ale, porter, stout, perry, cider, or any other spirit or liquor whatsoever, other than such as shall have been *bonâ fide* purchased of the lessors or their successors in business [*or,* nominees]; provided they shall at such time deal in such liquors as aforesaid, and shall be willing to supply the same to the lessee at the fair current market price thereof (*dd*): Such last mentioned further rent to be paid on the quarterly day of payment of the said yearly rent of £—— next ensuing after such purchase, consumption, sale, or disposal as aforesaid, and to be paid quarterly thereafter during the residue of the then current year: All the said rents to be paid without deduction.

Reddendum of moneys paid for insurance.

Reddendum of penal rent for selling liquors not supplied by lessors.

Covenants by lessee to pay rents;

2. THE LESSEE HEREBY COVENANTS with the lessors that he the lessee will, from time to time during the term hereby granted, duly pay the said yearly rent or sum of £——, and the said further rents or sums, if and whenever the same shall become payable respectively, at the times and in the manner hereinbefore appointed for payment thereof respectively, without any deduction or abatement, except as hereinbefore mentioned; AND ALSO will, during the said

(*dd*) See *Charrington & Co.* v. *Wooder,* [1914] A. C. 71.

VI. LEASE OF PUBLIC-HOUSE BY FIRM OF BREWERS.

term, pay and discharge all existing and future taxes, rates, assessments, duties, impositions, whether parliamentary, parochial, local, or otherwise, and outgoings (*e*) which may be payable by or imposed upon the landlord or the tenant in respect of the premises (except as aforesaid); AND ALSO, that he the lessee will, from time to time during the said term, at his own costs, sufficiently repair, amend, scour, cleanse, paint, glaze, pave, and maintain the premises, and all erections and buildings whatsoever which during the said term shall be erected or built thereon, or on any part thereof; and the same premises, erections, and buildings so being in all things well and sufficiently repaired, amended, scoured, cleansed, painted, glazed, paved, and maintained, will, at the expiration or other sooner determination of the same term, peaceably and quietly yield up unto the person or persons who shall then be entitled to the same; Together with all the fixtures and fittings specified in the schedule hereto, and all other fixtures or fittings which now are, or at any time during the term hereby granted shall be fixed, fastened, or put up, in or about the premises, or any part or parts thereof, including all signboards and placards relating to the businesses of the lessee and the lessors respectively (damage by fire or tempest only excepted); AND will from time to time replace and make good any of the said fixtures and fittings, including all such signboards and placards as aforesaid as shall become or be worn out, destroyed, damaged, or lost, by other articles of similar quality; PROVIDED ALWAYS, that nothing herein contained shall render the lessee liable to replace any plate-glass windows or mirrors which the lessors shall be liable to insure against damage by accident under the covenant on their part hereinafter contained; AND FURTHER, that it shall be lawful for the lessors, or either of them, and for their or his servants, agents, or workmen, twice or oftener in every year during the term hereby granted (giving to the lessee three days' previous notice of his or their intention so to do), to enter at seasonable hours in the daytime into and upon the premises, and to search and inspect the condition of the repairs thereof, or any part thereof, with the appurtenances (including all such fixtures, fittings, signboards, placards, and things as aforesaid); AND to give or leave notice in writing at or upon the premises, or any part thereof, for the lessee to repair and

to repair;

to permit lessor to enter and inspect premises;

(*e*) See *ante*, p. 519, note (*r*).

VI. LEASE OF PUBLIC-HOUSE BY FIRM OF BREWERS.

amend all defects, decays, or wants of reparation which shall be so found: AND that he the lessee will, within three calendar months after every such notice shall have been so given or left as aforesaid, well and sufficiently repair, amend, and make good all the defects, decays, and wants of reparation expressed in such notice (except damage by fire or tempest): AND FURTHER, that he the lessee [his permitted under-tenants, or his or their permitted assigns (*f*)] will, during all the term hereby granted, use and occupy, or cause to be used and occupied, the said messuage or tenement as or for an inn or public-house; and will at all times during the said term personally reside upon the demised premises, and carry on the business of a licensed victualler thereon so long as the necessary licences can be procured (*g*); and will not permit any gaming or riotous or disorderly practices to be carried on therein, or commit any offence against the laws for the time being in force with respect to publicans or licensed victuallers, but will keep and conduct the same premises in a proper and orderly manner, so as to afford no just or reasonable ground for the withdrawing or withholding of all or any of the licences for the sale of beer and ale and wine and spirituous liquors therein, as heretofore used and accustomed; and will from time to time apply for and do or cause to be done what shall be requisite for obtaining the renewal of such licence or licences; AND will not do or permit to be done any act or thing on the premises which may invalidate any policy for the insurance of the premises against loss or damage by fire, or which may render any increased or extra premium payable in respect of any such policy: AND FURTHER that he the lessee [his permitted under-tenants, or his or their permitted assigns] will not buy, consume, sell, or dispose of, either directly or indirectly, or permit to be bought, consumed, sold, or disposed of, either directly or indirectly, in, upon, out

to repair on notice;

to use premises as a public-house;

not to lose licences;

or insurance;

to sell only liquor supplied by lessors (*h*);

(*f*) The words in brackets avoid the mischief of an underlessee forfeiting the licences without the lessee being liable for a breach of his covenant: see *Bryant* v. *Hancock*, [1898] 1 Q. B. 716; [1899] A. C. 442; *Wilson* v. *Twamley*, [1904] 2 K. B. 99 (distinguish *Palethorpe* v. *Home Breweries Co.*, [1906] 2 K. B. 5).

(*g*) An assignment to a company is a breach of this covenant as to personal residence: see *Jenkins* v. *Price*, [1908] 1 Ch. 10.

(*h*) As to the effect of this covenant, see *Luker* v. *Dennis*, 7 Ch. D. 227; *Edwick* v. *Hawkes*, 18 Ch. D. 199; and *Manchester Brewery Co.* v. *Coombs*, [1901] 2 Ch. 608, and the cases cited therein. The burden of the covenant runs with the lease: *White* v. *Southend Hotel Co.*, [1897] 1 Ch. 767.

VI. LEASE OF PUBLIC-HOUSE BY FIRM OF BREWERS.

of, or about the messuage or tenement and premises hereby demised, or any part thereof, any wine, brandy, rum, hollands, gin, shrub, beer, ale, porter, stout, perry, cider, or any other spirit or liquor whatsoever, other than such as shall have been *bonâ fide* purchased of the lessors, provided they shall at such time deal in such liquors as aforesaid, and shall be willing to supply the same to the lessee at the fair current market price thereof; AND ALSO will not assign or underlet or part with the possession of the premises, or any part thereof without the consent in writing of the lessor previously obtained for that purpose; AND ALSO that he the lessee will, at the expiration or sooner determination of the said term deliver up and do all necessary acts for assigning and transferring to the lessors, or to any other persons or person whom they shall nominate in that behalf, all the then existing licences and certificates affecting the premises, on being paid a fair proportion for any unexpired term thereof, and for obtaining such renewals thereof as the lessors, or such other persons or person as aforesaid, may require, at the cost of the person or persons requiring the same; AND that such licences if not so delivered up, assigned and transferred as aforesaid, shall be considered as lost or wilfully withheld by the holder thereof, so that the licensing justices may receive a copy thereof under sect. 43 of the Licensing (Consolidation) Act, 1910; AND will upon any application produce to the licensing justices and deposit with their clerk a plan of the premises: AND will make at his own expense and within the time fixed by the licensing justices such alterations as they shall lawfully direct (*i*): AND will, if required, attend before the justices at his own expense and consent to any such transfer or renewal: AND the lessors or any person appointed by them in that behalf are and is hereby irrevocably empowered to apply for and sign, give and do, in the name and as agents or agent of the lessee, all notices and acts which may be necessary or proper for obtaining such transfer or renewal as aforesaid, and on any such application the production of these presents shall be conclusive evidence of the lessee's consent to such transfer or renewal (*ii*): AND if at any time such renewal shall be refused or be unobtainable for any cause other than the lessee's misconduct (in

not to assign, &c. without leave;

to transfer licences at end of term.

(*i*) See Licensing (Consolidation) Act, 1910, s. 72; *Smith* v. *Portsmouth Justices*, [1906] 2 K. B. 229.

(*ii*) See *Garrett* v. *Justices of Middlesex*, 12 Q. B. D. 620.

VI. LEASE OF PUBLIC-HOUSE BY FIRM OF BREWERS.

which case no compensation shall be paid to him), and payment of compensation for non-renewal shall be made, then subject to the approval of the licensing authority, there shall be paid to the lessee a sum not exceeding one-fifteenth part of the amount of such compensation, and the residue thereof shall be paid to the lessors (*k*).

Lessors' covenants; for quiet enjoyment(*l*).

3. THE LESSORS hereby covenant with the lessee that the lessee paying the rents hereby reserved, and performing and observing the several covenants, conditions and agreements herein contained, and on his part to be performed and observed, shall and may peaceably possess and enjoy the premises for the term hereby granted without any interruption or disturbance from the landlord or any person claiming by from or under him; AND

To insure.

FURTHER, that the lessors will at their own cost insure and keep insured the said messuages and buildings, and all other insurable fixtures and things, to their full value from damage by fire in some respectable office or offices; AND ALSO will insure and keep insured all plate-glass windows and mirrors in the said messuage to their full value from damage by accident in some respectable office or offices; AND will, when required, produce to the lessee the policy or policies of such insurance, and the receipt for the last premium on every such insurance; AND shall apply the money received on any such insurance in rebuilding, repairing, or reinstating the premises which shall have been damaged or destroyed by fire or accident as aforesaid.

Power of re-entry on non-payment of rent;

4. If the said several rents, or any part thereof respectively, shall be unpaid by the space of twenty-one days next after the same shall have become payable (being first lawfully demanded upon or at any time after the expiration of the said twenty-one days, and not paid when demanded); or if the lessee shall assign, let, or underlet, or in any manner part with the possession of the premises, or any part thereof, to any person or persons whomsoever, for the whole or any part of the term for which they are hereby demised, without the license or consent of the lessor in writing first obtained for so doing; or if the lessee shall become bankrupt, or shall assign his estate or effects, or any part thereof, in trust for his creditors, or shall compound or enter into any

or, on assigning or underletting premises without consent;

or on lessee becoming bankrupt, &c.;

(*k*) See Licensing (Consolidation) Act, 1910, s. 20.

(*l*) As to the covenants for title implied by law in a lease, see *Markham* v. *Paget*, [1908] 1 Ch. 697, where the earlier authorities are reviewed.

scheme of arrangement for the payment of his debts; or if any execution shall be levied upon his goods or chattels; or if he shall be convicted of any offence against any law for the time being affecting publicans or licensed victuallers; or if he shall not perform the covenants herein contained, which by him ought to be performed; then, and in any of the said cases, it shall be lawful for the lessor, into the premises, or any part thereof in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy, as if this lease had never been made, but without prejudice to any right of action or remedy of the lessor in respect of any previous breach of any covenant by the lessee.

VI. LEASE OF PUBLIC-HOUSE BY FIRM OF BREWERS.

or on non-performance of covenants.

5. PROVIDED that, if the said messuage shall remain untenantable for more than six calendar months by reason of damage from fire, tempest, or other inevitable accident, the rent hereby reserved shall not be payable in respect of the time beyond the first six calendar months, during which the said messuage shall so remain uninhabitable; AND for that purpose (if necessary) the rent shall be apportioned.

Rent to be suspended in case of fire, &c.

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

VII. LEASE *or* UNDERLEASE *of a* HOUSE *and* WORKSHOPS *at a* PREMIUM, *with an* INVENTORY *of the* FIXTURES *and a* SPECIAL AGREEMENT *in case of* DESTRUCTION *by* FIRE.

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (who and his heirs and assigns (*n*), unless the contrary appears, are hereinafter called "the lessor"), of the one part, and [*lessee*], of, &c. (who and his executors, administrators, and assigns, unless the contrary appears, are hereinafter called "the lessee"), of the other part: WITNESSETH as follows:—

Parties.

Testatum.

1. In consideration of the sum of £——, to the lessor paid by

(*m*) This lease will require an *ad valorem* stamp in respect of the rent, and also an *ad valorem* stamp in respect of the premium for the same duty as a conveyance on a sale for the same consideration: see *ante*, p. 507.

Stamp

(*n*) In the case of an underlease, say,

"who and his executors, administrators, and assigns," &c.

Underlease.

VII. HOUSE AND WORKSHOPS.

the lessee (the receipt whereof is hereby acknowledged); AND ALSO, in consideration of the rent and covenants on the part of the lessee and conditions hereinafter reserved and contained, he the lessor demises unto the lessee, ALL THAT messuage or tenement, with the workshops behind the same, numbered —, in —— Street, in the parish of ——, in the county of ——, now in the occupation of the lessee: TO HOLD the premises hereby demised, unto the lessee, from the 25th day of December, 19—, for the term of twenty-one years; paying therefor, yearly during the said term, the rent of £——, and so in proportion for any less time than a year, such proportional sum to become due and be paid immediately on the determination of the term (*o*), without any deduction (except for landlord's property tax) by equal quarterly payments on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December (*p*), in every year, the first payment thereof to be made on the 25th day of March, 19—; but subject nevertheless to the proviso and agreement hereinafter contained for the total or partial suspension of the said rent, in the events hereinafter mentioned.

Demise.

Parcels.

Habendum.

Reddendum, quarterly.

Covenant by lessee to pay rent;

to pay sewers rate and all taxes and rates whatsoever;

to repair (*r*);

2. The lessee hereby covenants with the lessor, that he the lessee will pay the said yearly rent hereinbefore reserved, on the days and in manner hereinbefore mentioned (without any deduction except as aforesaid): AND ALSO will pay during the said term, the land tax, and all other taxes, rates, impositions (*q*), charges and assessments whatsoever, parliamentary, parochial, or otherwise, which now are, or hereafter shall be imposed, charged, or assessed upon, or in respect of, the premises, or payable by either the owner or occupier in respect of the same, the landlord's property tax only excepted: AND ALSO will, during the said term, at his or their own costs and charges, well and sufficiently repair, uphold, support, cleanse, amend, and keep the premises, with all fixtures thereon and additions and appurtenances thereto, with all manner of necessary reparations, cleansings, and amendments, when, where, and as often as the same shall be

(*o*) See *Re United Club and Hotel Co.*, W. N. (1899) p. 67; 60 L. T. 665.

(*p*) *Or*, "on the usual quarterly days."

(*q*) See *ante*, p. 519, note (*r*).

(*r*) For full covenants to paint outside and inside, see *post*, Precedent IX., p. 540.

requisite: And the premises, being so well and sufficiently repaired, amended and kept, at the expiration or determination of the said term will quietly yield up, with all and singular the fixtures and articles contained in the inventory hereto, in as good condition as the same now are, reasonable use and wear thereof, and damage by fire and tempest in the meantime, only excepted: And further, that it shall be lawful for the lessor [and also for the original landlord of the premises hereby demised], and his agents [*or*, their respective agents (*s*)], with or without workmen or others, once or oftener in every year, during the said term, at reasonable times in the daytime, to enter upon the premises, in order to view and examine the condition thereof; and, if found necessary upon such view and examination, to give to the lessee, or leave on the said premises, notice in writing to the lessee, to repair and amend the same, within three calendar months then next following: within which period he, the lessee, will repair, amend, and make good all such repairs and amendments as shall be mentioned in such notice: And also, that the lessee will not assign, transfer, underlet, or part with the possession of the said premises, or any part thereof (*tt*), without the previous consent in writing of the lessor [but so that such consent shall not be unreasonably or vexatiously withheld] (*u*).

and at the end of term to leave same repaired, damage by fire excepted.

Agreement that lessor may enter to view the state thereof, and if necessary to give notice to repair.

Covenant by lessee to repair accordingly.

Not to assign, &c. without consent of lessor (*t*).

3. The lessor hereby covenants with the lessee, that he paying the said yearly rent, in manner aforesaid, and ob-

Covenant by lessor for peaceable enjoyment.

(*s*) The words in brackets are applicable to an underlease.

(*tt*) See *Grove* v. *Portal*, [1902] 1 Ch. 727.

(*t*) See Elph. Introduction, 284; Wolstenholme, 10th ed. p. 64; *West* v. *Dobb*, L. R. 5 Q. B. 460; *Varley* v. *Coppard*, L. R. 7 C. P. 505; *Bristol Co.* v. *Westcott*, 12 Ch. D. 461; *Horsey, &c.* v. *Steiger Corp.*, [1899] 2 Q. B. 79; *Gentle* v. *Faulkner*, [1900] 2 Q. B. 267; *Serjeant* v. *Nash*, [1903] 2 K. B. 304. As to bankruptcy not being a breach of this covenant, see *Re Riggs*, [1901] 2 K. B. 16. By sub-sect. (6) (i) this covenant is excluded from the operation of sect. 14 of the C. A. 1881.

(*u*) *Treloar* v. *Bigge*, L. R. 9 Ex. 151; *Sear* v. *House Property, &c. Soc.*, 16 Ch. D. 387; *Bates* v. *Donaldson*, [1896] 2 Q. B. 241; *Barrow* v. *Isaacs*, [1891] 1 Q. B. 417; *Eastern Telegraph Co.* v. *Dent*, [1899] 1 Q. B. 835; *Lewis and Allenby* v. *Pegge*, [1914] 1 Ch. 782. In the absence of a stipulation to the contrary, no fine is to be exacted for a licence to assign: see C. A. 1892, s. 3; *Waite* v. *Jennings*, [1906] 2 K. B. 11; *Andrew* v. *Bridgman*, [1908] 1 K. B. 596; *Jenkins* v. *Price*, [1908] 1 Ch. 10; *West* v. *Gwynne*, [1911] 2 Ch. 1; see also *post*, p. 541, note (*l*).

VII. HOUSE AND WORKSHOPS.

serving and performing all and singular the covenants, conditions, and agreements on his part to be performed and observed shall and may peaceably and quietly hold and enjoy the premises during the said term, without any interruption or disturbance of or by the lessor, or any person or persons whomsoever claiming under or in trust for him.

Proviso for re-entry.

4. PROVIDED ALWAYS, that if the yearly rent hereby reserved, or any part thereof, shall remain unpaid for twenty-one days next after the same ought to be paid as aforesaid, whether any formal or legal demand thereof shall have been made or not: or, if any of the covenants and agreements herein contained on the part of the lessee, shall not be by him observed, performed, and kept, then, and in any such case, it shall be lawful for the lessor, into and upon the premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, and enjoy, as if this lease had never been made, but without prejudice to any right of action or remedy of the lessor in respect of any previous breach of any covenant on the part of the lessee herein contained.

Proviso for suspension of rent in case premises are destroyed by fire.

5. PROVIDED ALSO, that in case the said messuage, workshops, and premises, or any part thereof, shall be destroyed or damaged by fire or tempest, or other inevitable accident (*x*) during the said term, so that the same shall remain untenantable or unfit for use and occupation for more than —— calendar months by reason of such damage, then, and in such case, and so often as the same shall happen, the rent hereinbefore reserved, or a fair and just proportion thereof, according to the nature and extent of the injury sustained, shall cease and be suspended or abate, during so long after the first —— months as the premises, or any part thereof, shall remain uninhabitable or unfit for use, by reason of such destruction or damage: AND for the purpose of such cesser or abatement the rent shall, if necessary, be apportioned: AND if any dispute shall arise between the said parties, in regard to the amount of the abatement to be so made in the said rent, or the period for which the said rent, or any part thereof, shall cease and be suspended, the same shall be referred to the arbitrament of two

Proviso for arbitration.

(*x*) As to the meaning of the words "or other inevitable accident," see *Saner* v. *Bilton*, 7 Ch. D. 815; *Manchester Bonded Warehouse Co.* v. *Carr*, 5 C. P. D. 507.

indifferent persons, one to be named by each of the said parties, with power to choose an umpire; And this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force, the provisions whereof shall apply as far as applicable.

In witness, &c.

The Inventory above referred to.

VIII. LEASE *to a* Builder's Nominee *of a* House, *with* Common Clauses:—Covenants *to* Finish *the* House—*to* Contribute *towards* Repairing Party-walls, Cleansing Drains, *&c.—not to use* Premises *as a* Shop—*to* Insure—*to give* Notice *of any* Assignment—*not to* Assign *after a certain* Period—Option *to* Lessee *to* Purchase *the* Fee (*y*).

THIS INDENTURE (*z*), made the —— day of ——, 19—, Between [*lessor*], of, &c. (who and his heirs and assigns (*a*), unless the contrary appears, are hereinafter called "the lessor"), of the first part; [*builder*], of, &c., builder (hereinafter called "the builder"), of the second part; and [*lessee*], of, &c. (who, and his executors, administrators, and assigns, unless the contrary appears, are hereinafter called "the lessee"), of the third part: WITNESSETH that, in consideration of the expense incurred by the builder in erecting and building the messuage hereby demised, and of the sum of £——, now paid by the lessee to the builder (the receipt whereof is hereby acknowledged), and of the rent and covenants on the part of the lessee, and conditions hereinafter reserved and contained, the lessor at the request and by the

Parties.

Testatum.

(*y*) This lease being for a term of more than forty years, if the property is situate in a district where registration is compulsory, will operate only as an agreement and will not pass the legal estate until it is registered: see L. T. R. 68—70.

(*z*) Stamp, *ad valorem* on yearly rent, and also an *ad valorem* stamp on the premium paid to the builder as a conveyance on sale for the same amount: see *ante*, p. 507.

Stamp.

(*a*) In the case of an underlease, say,

"who and his executors, administrators, and assigns," &c.

VIII. LEASE OF UNFINISHED HOUSE TO BUILDER'S NOMINEE.

direction of the builder hereby demises unto the lessee, ALL THAT parcel of ground, situate on the south side of —— Street, in the parish of ——, in the county of ——, AND ALL THAT messuage or tenement erected or in course of erection thereon, being the fourth house westward from ——, exclusive of the corner house, which premises, with the dimensions and abuttals thereof, are particularly described in the plan, drawn in the margin hereof and therein coloured ——; except and reserved unto the lessor and his other lessees and tenants, the free passage and running of water and soil, from any other buildings and lands contiguous or near to the premises, in, and through the sewers, drains, and water-courses made, or to be made, in or under the premises: To HOLD the premises hereby demised unto the lessee, from the —— day of ——, 19—, for the term of ninety-nine years: Paying therefor yearly during the said term, and so in proportion for any less time than a year (*b*), the rent of £——, by equal quarterly payments, on the 24th day of June, the 29th day of September, the 25th day of December, and the 25th day of March [*or*, "on the four usual quarterly days"], in every year, without any deduction, except for landlord's property tax, the first of such quarterly payments to be made on the —— day of —— next: AND the lessee hereby covenants with the lessor, that he the lessee will, during the said term, pay [*covenants to pay rent, rates, taxes, &c.*, ut ante, *p.* 530]; AND ALSO, that he the lessee will, at his own expense, under the inspection and to the satisfaction of the surveyor for the time being of the lessor, and in accordance with the plans, elevations, and specifications to be approved by him, before the 24th day of June next, complete and finish and make fit for habitation the said messuage or tenement, with the offices and outbuildings thereto belonging, and also well pave a footway in front of the said messuage or dwelling-house, with [Yorkshire] stone, four feet wide, with a granite kerb; and will produce such vouchers and other sufficient evidence as may be reasonably required by the said surveyor to satisfy him that the sum of £—— at the least has been expended in completing and finishing the said messuage and premises as aforesaid, and also will pay the fees and charges of the said surveyor: AND ALSO will, during the said term, contribute a rateable or reasonable proportion towards the expense of making, repairing and cleansing all party and fence walls, sewers, drains,

Parcels.

Habendum.

Reddendum.

Covenants by lessee to pay rent, taxes, &c.;

to finish house, &c.;

to contribute towards party-walls, roads, sewers, &c.;

(*b*) See *ante*, p. 530, note (*o*).

VIII. LEASE OF UNFINISHED HOUSE TO BUILDER'S NOMINEE.

water-courses, roads, pavements, ways, paths, and other easements or conveniences, used or to be used in common, by the occupiers of the premises, and the occupiers of other premises belonging to the lessor adjoining or near thereto: AND ALSO will, as occasion shall require, during the said term, well and sufficiently repair, maintain, pave, cleanse, amend, and keep the premises with the appurtenances in good and substantial repair: AND the premises, being in all things repaired, maintained, paved, cleansed, amended, and kept as aforesaid, at the end or other sooner determination of the said term, will quietly yield up unto the lessor, together with all additions and improvements which shall in the meantime be made thereto, and all fixtures which at any time during the last seven years of the said term, shall be affixed or fastened to the premises: AND ALSO that it shall be lawful for the lessor, or his agents, at all seasonable times, during such last seven years, to enter the premises, and take a schedule of the same fixtures and things: AND ALSO, that the lessee will, in every fourth year of the said term, paint all the outside wood-work and iron-work belonging to the premises, and all additions thereto, with two coats of proper oil colours, in a sufficient and workmanlike manner, and will also in like manner paint the inside wood-work and iron-work as often as the same shall be required (*d*): AND ALSO will forthwith, at his own cost, insure the said messuage and all buildings, erections and fixtures which at any time during the said term may be erected, on or affixed to the premises, to the full value thereof, such value to be determined by the surveyor for the time being of the lessor [*or*, in the sum of £—— at the least], in the —— Fire Insurance Office, or in some other well established office, to be approved in writing by the lessor, in the joint names of the lessor and the lessee, and keep the same continually so insured, during the said term, and will, upon the request of the lessor, or his agent, produce the policy for every such insurance and the receipt for the last premium paid for the same: AND ALSO will, if and whenever the said messuage and buildings, or any part thereof, shall be destroyed or damaged by fire, forthwith apply the moneys received in respect of such insurance in or towards reinstating the same, under the direction of the surveyor of the lessor, and in case such moneys shall be

to repair,

and leave repaired, together with all fixtures, &c.;

that lessor may enter to inspect repairs;

to paint outside;

to insure;

to rebuild in case of fire;

(*d*) For a further form of covenant to paint outside and inside, see next precedent, *post*, p. 540.

VIII. LEASE OF UNFINISHED HOUSE TO BUILDER'S NOMINEE.

insufficient for that purpose, will out of his own moneys make good the deficiency: And also, that it shall be lawful for the lessor and his agents, at all seasonable times, during the said term, to enter the premises, to take plans, and examine the condition thereof: And further, that all wants of reparation then and there found, and for the amendment of which, notice in writing shall be left at the premises, the lessee will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly: And also that the lessee will not make any addition to the said messuage and buildings except in accordance with the said plans, elevations, and specifications, nor cut, maim, alter, or injure any of the principal timbers, roofs, or walls of the same premises: And will not use the premises, nor any part thereof, otherwise than as a private dwelling-house, without the consent in writing of the lessor (*e*). nor by building or otherwise stop or obstruct any light belonging to any building on the ground adjoining or contiguous, or suffer to be done anything which may tend to the annoyance or damage of the lessor, or any of his tenants: And will not allow any encroachment to be made or easement to be acquired on or over the demised premises, and if any such encroachment or easement shall be made, or threatened to be made, will forthwith give notice thereof to the lessor, and will, at his own cost, do all things necessary for preventing such encroachment or the acquirement of such easement, and that if the lessee shall omit or neglect to do all such things as aforesaid, the lessor, his servants and workmen, may enter upon the demised premises and do the same: And that any costs incurred by the lessor under the foregoing provision, and all costs, charges, and expenses (including legal costs and fees payable to a surveyor which may be incurred by the lessor in or in contemplation of any proceedings under sect. 14 of the Conveyancing Act, 1881), with interest thereon at the rate of —— per cent. per annum from the time of the same being incurred until repayment shall be repaid by the lessee, and until repayment shall be charged upon the premises: And also that the lessee will not assign, or underlet, or part with the premises, or any part thereof, for the whole or any part of the term hereby granted, without giving notice in writing

to permit lessor to enter and view;

to repair according to notice;

not to cut or alter walls, &c.;

nor use premises as a shop;

nor obstruct the light belonging to adjoining buildings;

not to allow encroachments;

to pay costs, including costs of proceedings under sect. 14 of the C. Act, 1881;

to give notice of assignment;

(*e*) For a fuller form of covenant not to use the demised premises for the purposes of any trade or business, see next precedent, *post*, p. 540.

VIII. LEASE OF UNFINISHED HOUSE TO BUILDER'S NOMINEE.

within fourteen days then next to the lessor: AND will not, during the last seven years of the said term, assign, underlet, or part with the premises, or any part thereof, for all or any part of the residue of the said term, without the consent in writing of the lessor: AND THAT if, at any time hereafter, any dispute shall arise between the lessee and any other of the tenants of the lessor, touching the premises to them respectively demised, or the walls, lights, privileges, or appurtenances belonging thereto, or any annoyance arising therefrom, the lessee will from time to time refer every such dispute to be determined by the lessor, and, in case of the infancy of the owner for the time being of the premises by the guardians of the infant, whose determination respectively the lessee will abide by and perform. [*Covenant by lessor for quiet enjoyment*, ante, *p.* 531. *Proviso for re-entry by lessor on non-payment of rent, or breach of lessee's covenants*, ante, *p.* 532.]

not to assign during the last seven years; to refer disputes to landlord.

PROVIDED ALSO, that if, at any time before the expiration of —— years from the date of these presents, the lessee shall be desirous of purchasing the fee simple of the premises hereby demised at the price of £——, and of such desire shall give notice to the lessor, or forward to, or leave at his last known place of residence in England, not less than six calendar months' notice in writing, then, upon the expiration of such notice and on payment of the said sum of £——, together with interest at the rate of —— per cent. per annum from the expiration of such notice until completion of the purchase, and of all rent then accrued due up to such completion, the lessor, and all other necessary parties (if any), will, at the cost in all respects of the lessee, well and effectually convey the premises in fee simple, free from incumbrances, unto the lessee, or to such person or persons, and in such manner as he shall direct (*g*): PROVIDED ALWAYS, that if the lessee shall exercise

Option for lessee to purchase the fee (*f*).

The lessor's title up to

(*f*) The rule that a renewal of a lease by a tenant for life enures for the benefit of the remainderman applies also to the purchase of the freehold reversion: *Phillips* v. *Phillips*, 29 Ch. D. 673. As to the principle on which this rule is based, see *Bevan* v. *Webb*, [1905] 1 Ch. 620.

Purchase of reversion by tenant for life.

(*g*) It may often be advisable in leases giving an option to the lessee to purchase the fee to add the following proviso:—

Option to purchase.

"PROVIDED ALWAYS, that if the lessee shall exercise the option of purchase hereinbefore given to him, the conveyance [*or*, several conveyances] to him shall be executed by him in counterpart or duplicate, and shall contain covenants on the part of the purchaser to be so framed as to be binding so far as may be on him and

VIII. LEASE OF UNFINISHED HOUSE TO BUILDER'S NOMINEE.

the option of purchase hereinbefore given to him, he shall be deemed to have accepted the title of the lessor up to the date of these presents, and no earlier title shall be called for or required.

In witness, &c.

date of lease to be deemed to be accepted.

IX. UNDERLEASE *of a* House *in* London, *for* Twenty-one Years, *with* Stable *and* Coach-house—Ordinary Covenants, *&c.*—Special Clauses *as to* Maintenance *of* Square Garden—Proviso *for* Determination *of the* Lease *at the* End *of* Seven *or* Fourteen Years.

Parties and interpretation clause.

THIS INDENTURE (*h*), made the —— day of ——, 19—, Between [*lessor*], of, &c. (who, and his executors, administrators, and assigns, are hereinafter, unless the contrary appears, referred to as "the lessor"), of the one part; and [*lessee*], of, &c. (who, and his executors, administrators, and assigns, are hereinafter, unless the contrary appears, referred to as "the lessee"), of the other part: WITNESSETH that, in consideration of the rents and covenants on the part of the lessee, and conditions hereinafter reserved and contained, the lessor hereby demises unto the lessee, All that messuage or dwelling-house, situate and known as No. —, in —— Street [*or,* Square], in the parish of ——, in the county of London; together with the stables and coach-

Demise.

Parcels.

on all persons claiming under him, and so as to protect, as far as may be, the adjoining estates of the vendor, whether in the possession of himself or of any person or persons claiming under him, as follows, that is to say [*specify restrictive covenants*, e.g., *to contribute towards party-walls, &c., not to use the premises as a shop, nor obstruct lights*], and shall also contain such other provisions as may be reasonably required for securing and enforcing the performance and observance of such covenants."

A proviso giving to the lessee an option to purchase the fee may now be inserted in a building lease by a tenant for life of settled lands under his statutory powers: see sect. 2 of the Settled Land Act, 1889. As to the option being limited as to time, see *Woodall* v. *Clifton,* [1905] 2 Ch. 257; *Worthing Corporation* v. *Heather,* [1906] 2 Ch. 532. The term must be legally assigned: see *Friary, &c.* v. *Singleton,* [1899] 1 Ch. 86; reversed on the facts, [1899] 2 Ch. 261. As to the proviso as to the lessor's title, see *Welshman* v. *Spinks,* 5 L. T. 385.

Stamp.

(*h*) Stamp, *ad valorem* in respect of yearly rent reserved, *ante,* p. 507.

IX. UNDERLEASE OF TOWN HOUSE WITH USUAL COVENANTS.

house in the rear of the same messuage, and situate and known as No. —, in —— Mews, in the same parish, except and reserved unto the lessor and his other lessees and tenants the free passage and running of water and soil from any other buildings and lands contiguous or near to the premises hereby demised in and through the sewers, drains, and watercourses made or to be made in or under the premises, To HOLD the premises hereby demised, except as aforesaid, unto the lessee, from the —— day of ——, 19—, for the term of twenty-one years, determinable, nevertheless, as is hereinafter provided: paying therefor yearly during the said term, and so in proportion for any less period than a year, the rent of £——, by equal quarterly payments on the usual quarter days, without any deduction whatsoever, except for landlord's property tax; the first payment to be made on the —— day of ——, 19—, and the last payment in advance —— calendar months before the expiration of the said term: AND paying also during the said term, by way of further rent, such sum or sums as shall be equal to the sum or sums which shall from time to time be paid by the lessor in effecting or maintaining the insurance of the said premises hereby demised against destruction or damage by fire, such further rent to be paid on the quarter day next following the payment by the lessor of any such sum or sums: AND the lessee hereby covenants with the lessor [*to pay* "the said yearly rent, and also the said further or insurance rent" *and rates and taxes*, ante, *p.* 524: *to contribute to maintenance of party walls, roads, sewers, &c.*, ante, *p.* 534]: [AND will also contribute and pay to the lessor, or such person or persons as he shall from time to time direct, a proportionate part, in common with the owners and occupiers of other messuages in —— Square aforesaid, such proportionate part to be assessed from time to time [*state mode of assessment, e.g.*, "by the surveyor of the superior landlord," *or*, "by a committee of management to be from time to time appointed by the tenants or occupiers of the houses in —— Square aforesaid], of the expense of planting, mowing, roll-

Habendum.

Reddendum.

Further rent for insurance against fire (*i*).

Lessee's covenants: to pay rent, &c.; to contribute to maintenance of square-garden;

(*i*) In the case of an underlease granted by a lessor who is himself bound by a covenant in the ground lease to insure the premises against destruction or damage by fire, it will be often convenient that such insurance should be effected by him, and not by the underlessee, and that the premiums should be repaid to him by way of additional rent.

Insurance rent.

IX. UNDER-LEASE OF TOWN HOUSE WITH USUAL COVENANTS.

ing, gravelling, watering, and otherwise maintaining the garden or ornamental pleasure ground in the centre of the said square in good condition, and of repairing and painting the iron railings enclosing the same to the satisfaction in all respects of the lessor and the superior landlord and their respective surveyors]: AND will, during the said term, keep the premises and all fixtures and additions thereto in good and substantial repair and condition: AND will once in every three years, and also during the last year thereof, paint in two coats of good oil and lead paint all the outside woodwork and ironwork and plaster work of the premises, and such stone work and other parts thereof as are now or usually painted, in a sufficient and workmanlike manner, and of a proper colour to be approved by the lessor: AND will at all times make good and amend and keep in repair the stucco and cement work: AND once in every seven years, at the least, of the said term clean and repoint the outside stone and brick work belonging to the premises: AND will once in every seven years of the said term, in like manner, rub down and paint all the inside wood, iron, and plaster work, and other parts of the premises as are now or usually painted with two coats of proper oil and lead paint, and also wash, stop, whiten, or colour such parts of the premises as are now plastered, and grain and varnish such parts thereof as are now grained or varnished: AND THAT it shall be lawful [*covenant to permit lessor and the superior lessors to enter and view premises and to repair upon notice*, post, *p.* 548]: AND ALSO that the lessee will not do or suffer anything upon the premises, or any part thereof, which might be a nuisance or annoyance to the owners or occupiers of adjoining houses, or amount to a breach of the ground lease under which the lessor holds the same premises; and particularly that the lessee will not, without the previous consent in writing of the lessor, use or suffer to be used the premises, or any part thereof, as a shop, warehouse, or other place for carrying on any trade, business, or manufacture whatsoever; nor as a hospital, asylum, or charitable or public institution; nor for the purposes of a school, or of teaching music, or as a boarding-house or furnished lodging, nor otherwise howsoever than as a private dwelling-house; AND will not, without the like consent, exhibit or affix on or about the premises any bill or notice that any part of the premises (less than the whole) is

to repair;

to paint outside every three years;

to paint inside once in every seven years;

to permit lessor to inspect premises;

to use premises as a private dwelling-house;

IX. UNDERLEASE OF TOWN HOUSE WITH USUAL COVENANTS.

to be let furnished or unfurnished, nor any other bill, notice, door-plate, or inscription whatsoever; nor cause or allow any sale by auction, bazaar, exhibition, or public meeting to be held upon the premises; AND will not, without the like consent, assign or underlet the premises, or any part thereof (otherwise than by sub-letting the whole of the premises from year to year, or for any less term): PROVIDED ALWAYS, and it is hereby expressly agreed (*k*), that such consent as last aforesaid shall not be withheld without some reasonable objection to the respectability or responsibility of the proposed assignee or sub-lessee (*l*), and that no pecuniary consideration shall be required therefor: AND FURTHER that during the —— months immediately preceding the expiration or sooner determination of the said term, he the lessee will permit the lessor and his agent at any time to enter upon the premises, and to affix and maintain upon some convenient and conspicuous part thereof a notice for the letting of the same, or for the sale of the lessor's interest therein, and will also permit all persons who may be desirous of taking or purchasing the premises, and who shall produce a written order of the lessor or his agent to view the same at seasonable hours in the day time: AND FURTHER that the lessee will, at the expiration or other sooner determination of the said term, peaceably yield up unto the lessor the premises with the appurtenances, together with all buildings, erections, and fixtures now or hereafter to be built or erected thereon, or affixed or fastened thereto, in good and substantial repair and condition in all respects: [*Covenant by lessor for quiet enjoyment,* ante, *p.* 531]: AND ALSO that he the lessor will, during the said term, pay the ground rent payable in respect of the premises under the lease to him of the same premises dated the —— day of ——, 19—: AND will, at the request and cost of the lessee, at all times during the said term (unless prevented by fire or other inevitable accident) produce to him the said last mentioned lease; AND

not to assign or underlet without consent;

to permit lessor to affix notice for reletting, &c.;

to deliver up premises at end of term

Lessor's covenants: for quiet enjoyment;

to pay ground rent;

to produce ground-lease;

(*k*) These words are inserted in order to constitute a contract on the part of the lessor: see, as to the covenant not to assign, &c., *ante,* p. 531, notes (*t*) and (*u*).

(*l*) Where the consent was not to be withheld in respect of a "respectable and responsible person" it was held in *Harrison* v. *Barrow-in-Furness Corporation,* 63 L. T. 834, that a "corporation" was not a "person" within the meaning of this covenant; but this was overruled in *Willmott* v. *London Road Car Co.,* [1910] 2 Ch. 525.

IX. UNDER-LEASE OF TOWN HOUSE WITH USUAL COVENANTS.

to insure.

ALSO will at all times during the said term keep the premises insured against loss or damage by fire in the sum of £—— at the least, pursuant to the covenant in that behalf contained in the same lease; AND upon the request of the lessee produce to him the policy of such insurance and the receipt for the last premium paid in respect thereof; AND ALSO will if and whenever the said messuage and premises, or any part thereof, shall be destroyed or damaged by fire, cause all moneys which shall be received in respect of such insurance as aforesaid to be forthwith laid out in reinstating the premises so destroyed or damaged; [*Proviso for re-entry*, ante, *p.* 532: *Proviso for suspension of rent in case premises are destroyed by fire, and for arbitration*, ante, *p.* 532]:

Proviso that lessee may determine lease at the end of seven or fourteen years.

PROVIDED ALWAYS that if the lessee shall be desirous of putting an end to this present demise at the expiration of the first seven years or fourteen years of the term of twenty-one years hereby granted, and shall, for that purpose, deliver to the lessor, or leave at his usual place of abode, six calendar months' previous notice in writing of such his desire, and shall pay all arrears of rent, and perform all and every the covenants hereinbefore contained, and on his part to be performed; then and in such case (*m*), immediately after the expiration of the said term of seven or fourteen years, this present lease, and everything herein contained, shall cease and be absolutely void to all intents and purposes whatsoever [but without prejudice to any claim by the lessor against

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Proviso for determination of lease by either party.

(*m*) If the power of determining the lease is to be mutual, add—"Or, if the lessor shall be desirous of determining the term hereby granted at the end of the said seven or fourteen years, and of such his or their desire shall give unto the lessee such previous notice as is hereinbefore provided to be given by the lessee for such purpose; then and in either of the said cases immediately," &c. [*and add* "but without prejudice to any claim by either party against the other in respect of any prior breach of any covenant or condition herein contained"].

The words "but without prejudice," &c., are usually added, but they are not necessary: see *Blore* v. *Guilini*, [1903] 1 K. B. 356. Where a lessee is authorised, in the terms of the clause in the text, to determine the lease on payment of the rent and performance of the covenants, this has been held to be a condition precedent to the power of determining the lease by notice: *Friar* v. *Grey*, 4 H. L. C. 565; *Stait* v. *Fenner*, [1912] 2 Ch. 504.

the lessee in respect of any prior breach of any covenant or condition herein contained].

IN. UNDER-LEASE OF TOWN HOUSE WITH USUAL COVENANTS.

IN WITNESS, &c.

X. LEASE *of a* HOUSE *by a* TENANT *for* LIFE *under his* STATUTORY POWERS *in* CONSIDERATION *of a* FINE: *the* TRUSTEES *of the* SETTLEMENT *join to* ACKNOWLEDGE *the* RECEIPT *of the* FINE (*n*).

THIS INDENTURE (*o*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c. (who, and the person or persons for the time being entitled to the reversion of the hereditaments hereby demised, are hereinafter, unless the contrary appears, referred to as "the lessor"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (who are hereinafter referred to as "the trustees"), of the second part; and [*lessee*], of, &c. (who, and his executors, administrators, and assigns are hereinafter, unless the contrary appears, referred to as "the lessee"), of the third part: WHEREAS [*testator*], late of, &c., deceased, by his will dated the —— day of ——, devised (amongst other hereditaments) the hereditaments hereby demised to the use of the lessor for his

Parties and interpretation clause.

Recital of lessor's title (*p*);

(*n*) As to the power of a tenant for life to grant leases, see Preliminary Note, *ante*, p. 510. As to notice to trustees, S. L. A. 1882, s. 45; S. L. A. 1884, s. 5; S. L. A. 1890, s. 7 (1). As to the tenant for life's power to accept surrenders and grant new leases, see S. L. A. 1882, s. 13. As to copyholds, sect. 14; and as to undivided shares, sect. 19. The tenant for life cannot grant leases of "the principal mansion house" or "the pleasure grounds, park and lands (if any) usually occupied therewith" without the consent of the trustees or an order of the Court: see S. L. Act, 1890, s. 10. For a form of such lease, see *post*, Precedent XIII., p. 551. Under the Act of 1882, every lease by a tenant for life must be by deed, and must take effect in possession not more than twelve calendar months after date, and must reserve the best rent having regard to any fine taken (sect. 7) or the value of a surrendered lease (sect. 13 (5)): see *Re Handman and Wilcox*, [1902] 1 Ch. 599.

(*o*) Stamp, *ad valorem* on rent reserved and also on amount of premium, as on a conveyance by way of sale: see *ante*, p. 507. Stamp.

(*p*) If the testator died after 1897 it may be convenient to substitute for this recital the following:—

"AND WHEREAS under or by virtue of a devise contained in the will dated, &c., and proved, &c., of [*testator*], late of, &c., deceased, and of a deed poll, dated, &c., under the hands and seals of

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of agreement for lease.

life with remainders over, and the said testator by his said will also gave to the trustees a power of sale and exchange of the lands thereby settled, with such consent as is therein mentioned (*q*): AND WHEREAS the lessor has agreed to demise unto the lessee the premises hereinafter described in consideration of the sum of £——, by way of fine or premium, at the yearly rent of £——, and subject to the covenants and conditions hereinafter contained: AND, upon the treaty for the said lease, it was agreed that the trustees should join in these presents and acknowledge the receipt of the said fine (*r*) in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH that, in consideration of the sum of £——, now paid by the lessee to the trustees by the direction of the lessor, by way of fine or premium (the receipt whereof the trustees hereby acknowledge), and in consideration of the yearly rent, and covenants hereinafter reserved and contained, and on the part of the lessee to be respectively paid and performed, the lessor [by virtue of the powers vested in him by the Settled Land Acts, 1882 to 1890, and of every or any other power enabling him in this behalf] (*s*) hereby demises unto the lessee ALL THAT, &c. [*describe premises*]; ALL which premises are more particularly delineated in the plan drawn in the margin of these presents: except out of this demise the free passage and running of water and soil from the other houses of the lessor or his tenants, adjoining the premises hereby demised, by and through the channels and drains now or at any time hereafter in, on, or passing through the premises: TO HOLD the

Demise.

Parcels.

Exception of free passage for water and soil.

[A. B.] and [C. D.], the executors named in the said will, who thereby assented to the said devise, the lessor is now tenant for life in possession of the hereditaments hereby demised, and the trustees are the present trustees of the settlement created by the said will for the purposes of the Settled Land Acts, 1882 to 1890."

or recite as in Prec. XIII., *post*, p. 552.

(*q*) See S. L. Act, 1882, s. 2 (8).

(*r*) The fine is to be deemed "capital money" (S. L. A. 1884, s. 4) and must be paid to the trustees (S. L. A. 1882, s. 22), who must either concur in the deed or give an indorsed receipt for the fine.

(*s*) It is not necessary to refer to the statutory power: see *Mogridge* v. *Clapp*, [1892] 3 Ch. 382; and the words in brackets may be safely omitted.

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premises hereby demised, unto the lessee, from the twenty-fifth day of March, 19—, for the term of twenty-one years: paying therefor, yearly, during the said term, unto the lessor, the rent of £——, by equal half-yearly payments, upon the days following: that is to say, the twenty-fourth day of June and the twenty-fifth day of December in every year, without any deduction; the first of such half-yearly payments to be made on the twenty-fourth day of June, 19—: AND the lessee hereby covenants with the lessor in manner following: that is to say, that the lessee will [*covenant to pay rent* (*t*) *and taxes, &c.*, ante, *p.* 530; *to contribute towards party walls, roads, sewers, &c.*, ante, *p.* 534]: AND ALSO will, before the end of the first year from the commencement of this demise, put the premises into good and substantial repair; and lay out and expend in such repairs, or in substantial improvements to the premises, exclusive of internal painting and papering, the sum of £—— at the least: AND will, within six calendar months next after the premises shall be so repaired or improved, render to the said lessor, or to his surveyor or agent, the several bills, documents, and other evidence, requisite to prove to their satisfaction that the aforesaid sum, at the least, has been so expended and laid out; and thereupon the lessee shall be entitled to a certificate that the same sum has been duly expended as aforesaid [*covenants to repair and paint*, ante, *pp. 535 or 540*; *to permit lessor to view premises and to repair on notice*, ante, *p.* 536; *to deliver possession at end of term*, ante, *p.* 541]: AND ALSO, that the lessee will not use, exercise, or carry on, or permit or suffer to be used, exercised, or carried on, in or upon the premises, or any part thereof, any of the trades, manufactures, or businesses mentioned in the schedule hereto, or any other noisy or offensive trade whatsoever (*u*); or erect any building in the yard or garden of the premises, higher

Habendum.

Reddendum.

Covenants by lessee to pay rent, &c. and to contribute proportionally towards cleansing drains, &c.

In first year of term to expend in repairs and improvements £—;

and within six months render bills, &c. to prove expenditure;

lessee to have certificate that that sum has been expended.

That lessee shall not carry on or permit to be carried on any noisy or offensive trades;

(*t*) Every lease by a tenant for life under the S. L. Acts must contain a covenant by the lessee for payment of rent (*Boyce* v. *Edbrooke*, [1903] 1 Ch. 836, at p. 842), and a condition of re-entry on non-payment of rent within a time specified, not exceeding thirty days: S. L. A. 1882, s. 7 (3).

(*u*) Clauses of this nature frequently give rise to the question, as to what are offensive trades. It is in general better, therefore, if an enumeration is attempted, to specify as many as possible, especially any to which it may be intended that the clause shall extend, but which are not clearly of this description. For a clause prohibiting the exercise of *any* trade upon the demised premises, *vide ante*, p. 540.

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than twelve feet above the parlour floor thereof, without having first obtained the licence and consent in writing of the lessor: AND ALSO, that the lessor and his tenants shall have free liberty of watercourse in and through the premises, to carry off the water and soil from the near or adjoining tenements: AND that it shall be lawful for the workmen of the lessor at all seasonable times, in the daytime, to enter upon the premises, or any part thereof, for the purpose of repairing such near or adjoining premises, or emptying or cleansing the drains, necessaries, gutters, or cesspools thereto belonging: AND ALSO [*covenant to permit lessor to affix notice for reletting, &c.*, ante, *p.* 541]: AND ALSO [*covenant to insure, &c.*, ante, *p.* 535]: AND the lessor hereby covenants, &c. [*covenant for quiet enjoyment*, ante, *p.* 531, *ending*] without interruption or disturbance by the lessor or any person claiming under or in trust for him or under the trusts or limitations of the said will: [*Proviso for re-entry*, ante, *p.* 532].

or erect any building in the yard higher than twelve feet without licence.

That lessor shall have liberty of watercourse.

IN WITNESS, &c.

THE SCHEDULE HEREINBEFORE REFERRED TO.

XI. LEASE *of a* RESIDENTIAL FLAT, *or* SET *of* CHAMBERS (*w*).

Parties.

THIS INDENTURE (*x*), made the —— day of ——, 19—, BETWEEN A. B., of, &c. (who and his heirs (*y*) and assigns, unless the contrary appears, are hereinafter called "the lessor"), of the one part, and C. D., of, &c. (who and his executors, administrators and assigns, unless the contrary appears, are hereinafter called "the lessee"), of the other part: WITNESSETH that the lessor hereby demises unto the lessee ALL THAT flat or

Demise.

Parcels.

(*w*) This is a very simple form to be used where stringent stipulations are not required. For an elaborate precedent of a lease of a flat, see Key & Elph. 10th ed. vol. i. p. 911. The payment for gas and electricity will, of course, be a matter of arrangement. In this precedent it is assumed that the tenant will be provided with separate meters, and will pay the charges directly to the companies.

(*x*) Stamp, see *ante*, p. 507.

(*y*) In the case of an underlease, say, "executors, administrators and assigns."

XI. LEASE OF FLAT OR RESIDENTIAL CHAMBERS.

suite of apartments consisting of —— rooms, known or intended to be known as No. —— on the —— floor of the messuage or mansion known as No. —— Street [*or*, Mansions], in the parish of ——, in the county of ——: [RESERVING to the lessor and to the superior lessor or lessors for the time being, full right to erect any buildings upon any adjacent property, notwithstanding that such buildings when erected may impair or injuriously affect the free access of light and air through any windows of the premises:] Together with the user in common with the lessor and his other tenants of the entrance hall, lifts, stairs and passages leading to the said flat and also of the gas and water-pipes in the mansion for the service of the said flat: To HOLD unto the lessee, for the term of —— years, from the —— day of ——, 19—, PAYING THEREFOR during the said term the yearly rent of £——, and so in proportion for any less period than a year, without any deduction except for landlord's property tax, by equal quarterly payments on the usual quarter days in every year, the first of such payments to be made on the —— day of ——, 19—: AND THE LESSEE HEREBY COVENANTS with the lessor that he, the lessee, will pay the said rent at the times and in manner aforesaid: AND ALSO will not use or permit the premises to be used for any illegal or improper purpose, nor exhibit any placard on any part thereof, nor hang, or allow to be hung, any clothes, or other articles, on the outside of the premises, nor make, or permit to be made, any disturbance, noise, or annoyance whatsoever, detrimental to the premises, or to the comfort of the other inhabitants of the said mansion, nor do, or permit to be done, any act or thing which may be, or grow, to the annoyance, damage, or disturbance of the lessor, or the superior lessor or lessors for the time being, or their tenants, or the occupiers of any adjoining premises, nor convert the premises, or any part thereof into nor use the same as a shop or warehouse, nor suffer any trade to be carried on therein, but will use the same as a private residence only: AND WILL not use the same for any purpose or in any manner so as to cause scandal or annoyance to the other inhabitants of the said mansion, or to the neighbours or neighbourhood: AND WILL not waste, or permit to be wasted, any water on the premises: AND WILL not allow any person or persons or children under his control to loiter or play in the passages, landings, or stairs or lift of the said mansion, and will

Reservation of right to build on adjoining land.

Habendum.

Reddendum.

Lessee's covenants: to pay rent;

not to use premises for improper purposes or cause annoyance;

not to waste water;

not to use passages, &c. except for ingress or egress;

XI. LEASE OF FLAT OR RESIDENTIAL CHAMBERS.

not use the same in any way except for the purposes of ingress or egress: AND WILL use the back stairs only for the purpose of bringing coal and other articles into the said flat: AND WILL not assign or underlet the premises, or any part thereof, without the consent in writing of the lessor, such consent not to be unreasonably withheld (*z*): AND WILL keep the interior of the premises, and also the doors and windows thereof, and the fixtures therein, and all interior walls, pipes, and other appurtenances, in good substantial and tenantable repair, and in clean condition (damage by fire excepted): AND particularly will in the seventh year of the said term, calculated from the —— day of ——, 19—, whitewash the ceilings and cornices, paper the walls of the premises with suitable paper, and paint in a proper manner with two coats of good oil and whitelead paint of suitable colours, and grain and varnish all the internal wood, iron, and other work previously painted, grained, or varnished: AND ALSO will permit the lessor, or his agents, and the superior lessor or lessors for the time being, and their respective architects, agents, surveyors, and workmen, twice in every year or oftener during the said term, at all reasonable hours, to enter into the premises, to view the condition thereof, and to give or leave notice in writing upon the premises for the lessee of all defects and wants of repair there found: AND ALSO will within three calendar months after every such notice well and sufficiently repair and make good such defects and wants of repair, whereof notice shall have been so given or left: AND ALSO will permit the lessor and his agents or workmen to do all such repairs as they may be liable to do upon the premises, or in or upon premises adjoining the same: AND ALSO will not during the said term cut or maim any of the principal timbers or walls of the premises, or any part thereof, or make, or permit to be made, any addition to the premises, or any alteration in the architectural decoration thereof, without the licence in writing of the lessor: AND WILL at the end of the said term peaceably and quietly deliver up possession of the premises unto the lessor in good state and condition (damage by fire excepted) together with the landlord's fixtures now or at any time during the said term in or upon the premises, and all improvements and additions thereto: AND THE LESSOR HEREBY COVENANTS with the lessee that the lessee, performing and observing all the covenants by the lessee herein

not to assign, &c. without consent of lessor;

to repair internally;

and paint, &c. in seventh year of the tenancy;

to permit to inspect premises;

to repair on notice;

not to injure the premises;

to deliver possession at end of term.

Lessor's covenants:

(*z*) See as to this, *ante*, p. 531, note (*u*).

contained, may quietly hold and enjoy the premises during the said term without any interruption by the lessor or any person claiming through him: AND FURTHER that he the lessor will pay all rates and taxes, parliamentary, parochial, or otherwise, that now are, or that hereafter may be imposed upon the premises, including water rate and the charges for gas and electricity consumed or used in or for the purposes of the said entrance hall, lift, stairs, and passages, and that he will keep the exterior of the premises in good and substantial repair: [AND ALSO will, at his own proper costs, within three months from the date hereof, completely finish the premises fit for habitation in a good and substantial and workmanlike manner, and with good and proper materials of their respective kinds]: PROVIDED ALWAYS that on any breach of any of the covenants by the lessee herein contained the lessor may re-enter upon the premises, and immediately thereupon the said term shall absolutely determine: PROVIDED ALSO that if the premises, or any part thereof, shall at any time during the said term be destroyed or rendered uninhabitable by fire (except through the wilful neglect of the lessee), then and in such case the payment of the rent hereby reserved, or a proportionate part thereof, according to the extent of the damage incurred, shall be suspended until the premises shall have been reinstated and again rendered fit for habitation.

IN WITNESS, &c.

XI. LEASE OF FLAT OR RESIDENTIAL CHAMBERS.

for quiet enjoyment; to pay taxes, &c.

Proviso for re-entry.

Proviso for suspension of rent in case of destruction of premises by fire.

XII. UNDERLEASE *of* PART *of a* HOUSE, *as* BUSINESS OFFICES, *for* TWENTY-ONE YEARS. COVENANT *by* LESSEES *to* OCCUPY *as* BUSINESS OFFICES, *and not to bring* COMBUSTIBLE MATERIALS *upon the* PREMISES, *so as to* INVALIDATE FIRE INSURANCE. *By the* LESSOR *to pay all* TAXES, *&c., and to* INDEMNIFY *the* LESSEES *therefrom.*

THIS INDENTURE (*a*), made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (who and his executors, administrators and assigns, unless the contrary appears, are hereinafter called "the lessor"), of the one part, and [*lessees*], of, &c., trading as —— in partnership (*b*) under the style or firm of —— & Co.

Parties.

(*a*) Stamp, *ad valorem* on yearly rent: see *ante*, p. 507.

Stamp.

(*b*) In the case of a limited partnership, sects. 6 and 7 of the Limited Partnerships Act, 1907, should be considered; and it might be as well in

XII. LEASE OF PART OF HOUSE AS BUSINESS OFFICES.

Testatum.

(who and their executors, administrators and assigns, unless the contrary appears, are hereinafter called "the lessees"), of the other part: WITNESSETH that, in consideration of the rent and covenants hereinafter respectively reserved and contained and on the part of the lessees to be paid and performed, the lessor

Parcels.

hereby demises unto the lessees, ALL those offices or rooms, &c. [*describe rooms*], being part of a messuage, &c., situate, &c. (*bb*), with full liberty for the lessees, their servants and visitors, to use the entrance, stairs, and passages of the said messuage for the purpose of passing and repassing at all times, to and from the said offices and premises hereby demised [on all days throughout the year, except Sundays, Christmas Day, Good Friday, and bank holidays, between the hours of —— in the forenoon, and —— in the afternoon]: Together also with the use in common with other persons entitled thereto of the water-closets, lavatory,

Habendum.

and conveniences on the —— floor of the said messuage: To HOLD the premises unto the lessees, as joint tenants and as part of their partnership property, from the —— day of ——, 19—, for the term of twenty-one years, determinable nevertheless as hereinafter mentioned: PAYING THEREFOR, yearly during the said term, and so in

Reddendum quarterly.

proportion for any less period than a year, the clear rent of £——, on the usual quarterly days in every year, by equal portions, the first payment thereof to be made on the twenty-fifth day of March, 19—: AND THE LESSEES HEREBY jointly and severally covenant with the lessor, that they the lessees, or one of them, will pay the said rent at the times and in manner aforesaid: AND ALSO [*covenant to make internal repairs, and to permit the lessor to enter and view, and to repair on notice, ante*, p. 548]; AND ALSO, that they

Covenant by lessees not to use or permit offensive trades;

the lessees will not, during the continuance of this demise, use, or permit to be used, the premises, or any part thereof, otherwise than as business offices, nor for any purpose or in any manner which may be a nuisance or annoyance to the owners or occupiers of adjoining houses, or of other offices or rooms in the messuage

not to bring combustible materials on the premises so as to invalidate any fire insurance;

aforesaid, nor will bring, or permit to be brought to or lodged in or upon the premises, or any part thereof, any goods of a sort or quality, nor do or suffer any act or thing, which may in any

that case for the lease to be taken by the "general" partners without joining the "limited" partner.

(*bb*) A lease of "rooms situate on two floors of business premises" was held to include the external walls: *Goldfoot* v. *Welch*, [1914] 1 Ch. 213.

way affect or invalidate any insurance or insurances from fire, made, or hereafter to be made, by the lessor of the premises, or of any goods and merchandize in the part thereof occupied by him or his undertenants: AND will not assign or underlet the premises or any part thereof without the consent in writing of the lessor: AND THE LESSOR HEREBY COVENANTS with the lessees, that they the lessees paying the rent or sum of £ —, hereinbefore reserved and made payable, and observing, fulfilling, and keeping all and singular the covenants and agreements herein contained and on their part to be observed and performed, shall, peaceably and quietly, hold and enjoy the premises during the said term, without any disturbance or interruption whatsoever by the lessor, or any other person claiming under him; freed and discharged of and from the payment of land tax, and all other rates, taxes, assessments, and impositions whatsoever (other than parochial rates, gas rate, and water rate), now payable or hereafter to become payable in respect of the premises, or any part thereof, by authority of Parliament or otherwise: AND which taxes, assessments, and impositions (other than as aforesaid), the lessor hereby covenants with the said lessees to pay and satisfy and also to indemnify the said lessees from all payments in respect thereof: AND THE LESSOR HEREBY COVENANTS with the lessees to keep the exterior of the premises in good and substantial repair: [*Proviso for re-entry, ante*, p. 532 *or* 549. *Proviso for determination of the lease at the end of seven or fourteen years, ante*, p. 542.]

XII. LEASE OF PART OF HOUSE AS BUSINESS OFFICES.

not to assign, &c. without consent.

Covenant by lessor for quiet enjoyment;

free from all taxes, payments for water, &c.

Covenant by lessor to pay all taxes, &c.

IN WITNESS, &c.

XIII. LEASE *of the* PRINCIPAL MANSION HOUSE, GARDEN, *and* PLEASURE GROUNDS *by a* TENANT *for* LIFE *under the Settled Land Acts.* PENAL RENTS *on* BREACH *of certain* COVENANTS. MANAGEMENT *of the* GARDEN, FRUIT TREES, PLEASURE GROUNDS, *&c.* (*c*).

THIS INDENTURE (*d*), made, &c., BETWEEN [*lessor*], of, &c. (who, and the person or persons for the time being entitled to the reversion of the hereditaments hereby demised, unless the contrary appears, are hereinafter referred to as "the lessor"), of the first

Parties.

(*c*) As to leases by a tenant for life under the S. L. Acts, see Preliminary Note, *ante*, p. 510; and note (*n*), *ante*, p. 543.

(*d*) Stamp, *ad valorem* on the amount of the rent. No additional stamp is required in respect of the penal rents: see *ante*, p. 508.

Stamp.

XIII. LEASE OF MANSION HOUSE, PARK AND GARDEN, ETC.

part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*lessee*], of, &c. (who, and his executors, administrators, and assigns, unless the contrary appears, are hereinafter called "the lessee"), of the third part:

Recitals: of will or settlement;

WHEREAS by virtue of the will dated, &c., and proved, &c., of [*testator*], deceased [or, "of an indenture of settlement, dated, &c., and made between," &c.], the lessor is now tenant for life [*or*, "the person having the powers of a tenant for life under the Settled Land Acts, 1882 to 1890"] of the hereditaments hereby demised, and the trustees are now the trustees for the purposes of the said Acts of the settlement created by the said will [*or*, "of the said settlement"].

of agreement for lease.

AND WHEREAS the vendor, with the consent (hereby testified) of the trustees, has agreed to demise the said hereditaments hereinafter described unto the lessee for the term and at the yearly rent and subject to the covenants and conditions hereinafter expressed and contained.

Testatum.

NOW THIS INDENTURE WITNESSETH as follows:—

1. In consideration of the rents hereby reserved, and of the covenants by the lessee hereinafter contained; the lessor, with the consent of the trustees, hereby demises unto the lessee, ALL THAT mansion house, situate in the parish of ——, in the county of ——, and commonly known as —— Lodge, with the park (*e*), gardens, pleasure grounds, buildings, and hereditaments occupied or held therewith; AND ALSO ALL THAT close, or parcel of meadow or pasture land, situate in front of the said messuage or dwelling-house, and partly surrounding the same, containing by estimation twelve acres or thereabouts; AND ALSO ALL THAT other close, or parcel of meadow land, situate behind the said dwelling-house, and containing by estimation six acres or thereabouts; AND ALSO ALL THAT wood, or parcel of wood ground, situate near unto the said mansion house, with the shrubbery and gravel walk through the same, containing by estimation ten acres or thereabouts; AND ALSO ALL THAT lake or piece of land covered with water, situate near the said mansion house, and containing by estimation —— acres or thereabouts; AND which mansion house, park, gardens, pleasure grounds, closes, pieces, or parcels of land, wood, and

Parcels: dwelling-house;

wood and shrubbery.

(*e*) As to the meaning of "park" in the S. L. Acts, see *Pease* v. *Courtney*, [1904] 2 Ch. 503.

premises, are now in the occupation of the lessor, and are more particularly described in the plan drawn in the margin hereof: To HOLD the said mansion house, and all and singular other the premises hereby demised, with their appurtenances, unto the lessee henceforth during the term of —— years (*f*): paying therefor the yearly rent of £——, half-yearly, on, &c.; the first payment to be made on the —— day of —— next; AND ALSO paying on the days aforesaid (above the yearly rent of £—— hereinbefore reserved), for every acre of meadow or pasture ground which the lessee shall plough, break up, or convert into tillage, contrary to the covenant hereinafter contained, the yearly rent of 100*l.* during the then residue of the said term; the first payment of the said additional rent to be made on such of the days hereinbefore appointed for payment of rent as shall happen next after such ploughing, breaking up, or conversion into tillage as aforesaid; AND in case the lessee shall be guilty of any breach or non-performance of any of the several covenants or agreements hereinafter contained on the part of the lessee to repair the premises, and to preserve the timber trees and other trees on the premises, and not to assign, underlet, or otherwise dispose of or part with the possession of the premises as is hereinafter more fully expressed: then also, and on every such breach or non-performance, paying the further additional yearly rent of 200*l.*, during the said term, on the days and in manner aforesaid; the first payment of the rent lastly hereinbefore reserved to be made on such of the aforesaid days of payment as shall happen next after any and every such breach or non-performance as aforesaid.

XIII. LEASE OF MANSION HOUSE, PARK AND GARDEN, ETC.

Habendum.

Reddendum.

Reddendum of 100*l.* an acre for ploughing meadow.

Reddendum of additional rent for breach of covenant.

2. The lessee hereby covenants with the lessor, that he the lessee will pay the yearly rents hereby reserved at the times and in manner hereinbefore appointed for payment thereof respectively; AND ALSO, that the lessee will, at all times during the continuance of the term hereby created, as often as occasion shall require, at his own expense, sufficiently repair, maintain, paint, and preserve the said mansion house, with the stables, outbuildings, and appurtenances thereunto belonging, and all other the erections and buildings standing or being on the premises, or any part thereof; AND will keep the premises, with all the walls, rails, fences, drains, sinks, sewers, and appurtenances thereunto belonging, in

Covenants by lessee to pay rents and to repair.

(*f*) Not exceeding twenty-one years: see S. L. A. 1882, s. 6.

XIII. LEASE OF MANSION HOUSE, PARK AND GARDEN, ETC.

good and tenantable repair and condition (accidents by fire only excepted); AND ALSO that the lessee will, from time to time during the continuance of the present demise, keep the gardens and garden ground belonging to the said messuage or dwelling-house well cropped and manured, and manage the same according to approved methods of gardening; AND that he will not cut down or destroy any of the fruit trees now growing, or which shall, at any time or times during the term hereby created, grow in the said gardens (except such trees as shall be decayed or shall cease to be productive of fruit), but will carefully preserve the same trees, except as aforesaid, and cause the said fruit trees to be properly pruned at seasonable times of the year: AND that he will plant, in the place or stead of every fruit tree which shall be decayed or become unproductive during the said term, and which shall be cut down by him, a thriving tree of proper growth, of the same sort of fruit: AND ALSO that the lessee will not at any time during the continuance of this present demise, fell, cut down, lop, top, or carry away any of the timber or other trees now growing or being, and which shall at any time or times during the said term grow or be, upon the other parts of the premises, but will preserve the last mentioned trees, and all the shrubberies, hedges, and underwood belonging to the premises from damage or injury by cattle or otherwise; AND ALSO will keep the said park, gardens, and pleasure grounds in good order, as the same have been usually kept by the lessor, and will not use the same for any other purposes than those of pleasure and ornament; nor commit, or suffer to be committed, on the premises, or any part thereof, any waste, spoil, or destruction whatsoever; AND ALSO that the lessee will not, at any time during this present demise, plough, break up, or convert into tillage, all or any of the meadow or pasture ground hereby demised, without first obtaining the licence or consent in writing of the lessor for that purpose; AND ALSO that the lessee will, in every year during the said term, cause all the dung, manure, and compost to arise from the premises, or any part thereof, to be spread or bestowed in a husbandlike manner upon the land or ground hereby demised, on such part thereof as shall stand in most need of manure; AND that he will not in anywise impoverish or deteriorate the land or ground hereby demised, or any part thereof; but will, at all times during the said term, use, manage, and cultivate the same in a husbandlike manner; AND ALSO that the lessee will not, at any

To keep the gardens in order;

to preserve the fruit trees;

to plant fresh trees in the room of decayed trees;

not to cut timber trees;

to keep pleasure grounds in order;

not to convert land to tillage;

to spread upon the lands the manure that shall arise therefrom;

not to assign, demise or

time or times during the term hereby created, assign, demise, or otherwise dispose of or part with the possession of the premises, or any part thereof, to any person or persons whomsoever, for the whole or any part of the said term, without the licence of the lessor in writing first obtained for the purpose; AND ALSO that the lessee will, at the expiration or other sooner determination of the term hereby granted, peaceably and quietly yield up unto the lessor the hereby demised mansion house, closes, pieces, or parcels of land, wood, lake, and premises, in good and tenantable repair and condition; AND ALSO that the lessor shall be at liberty, either with or without workmen or others, twice in every year during the term hereby granted, at all convenient times in the day, to enter into and upon the premises, in order to view the same and examine the state and condition thereof; AND in case the lessor shall find any want of repairs, and shall deliver to the lessee, or leave upon the premises, a notice in writing, enjoining him to repair the premises, then the lessee shall, within the space of two calendar months after the delivery of such notice, repair the same accordingly; AND FURTHER, that the lessee will not, during the term hereby granted, use or employ the premises, or any part thereof, or permit or suffer the same to be used or employed, for the purposes of any trade or business whatsoever.

otherwise part with the possession;

to leave premises at the end of term;

to permit lessor to inspect repairs;

not to use premises for purposes of trade.

3. The lessor hereby covenants with the lessee that the lessee, paying the said yearly rents hereby reserved respectively, and observing and performing the covenants hereinbefore contained shall quietly enjoy the premises during the said term without any disturbance by the lessor, or any person claiming through, under, or in trust for him; PROVIDED ALWAYS, that if the yearly rents, or any of them, hereby reserved, or any part thereof respectively, shall be in arrear for the space of thirty days next after either of the days hereinbefore appointed for payment thereof, whether the same shall have been lawfully demanded or not; or in case default shall be made in the observance or performance of any of the covenants hereinbefore contained and on the part of the lessee to be observed and performed, then, in either of the said cases, it shall be lawful for the lessor to re-enter into the premises, or any part thereof, in the name of the whole, and to repossess and enjoy the same as in his former estate; and upon such entry the term hereby granted shall cease, determine, and be absolutely void.

Covenant by lessor: for quiet enjoyment;

Proviso for re-entry.

IN WITNESS, &c.

XIV. AGREEMENT FOR BUILDING LEASES AND ADVANCES BY LESSOR.

XIV. AGREEMENT *for a* BUILDING LEASE *or several* BUILDING LEASES; SPECIAL PROVISIONS *for* CONSTRUCTION *of several* HOUSES, *and as to* TIME *of* COMPLETION; PROVISIONS *as to* ADVANCES *by* LESSOR *to* LESSEE *as the* WORKS PROGRESS (*h*). [OPTION *to* PURCHASE *in Note.*]

Parties and interpretation clause.

AGREEMENT (*i*), made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (who, and his heirs and assigns, unless the contrary appears, are hereinafter called "the lessor"), of the one part, and [*lessee*], of, &c. (who, and his executors, administrators, and assigns, unless the contrary appears, are hereinafter called "the lessee"), of the other part; WHEREBY IT IS AGREED as follows:—

Lessee may enter and build.

1. The lessee may at any time or times after the execution of this agreement, and until the determination thereof, enter upon all that piece or parcel of land situate, &c., which premises are delineated with the abuttals in the plan annexed to this agreement, and therein coloured ——, for the purpose only of executing the operations and works hereinafter mentioned.

Lessee to fence off building land.

2. The lessee shall, within —— months from the date of this agreement, at his own cost, sufficiently fence off the land hereby agreed to be demised so as to protect the adjoining land from trespass and damage, and will, previously to requiring any lease to be granted under these presents, fence off the land from time to time required to be leased from the adjoining land with a substantial wood paling, or with a brick wall not less than nine inches in thickness and four feet in height, to the satisfaction of the architect or surveyor for the time being of the lessor (hereinafter referred to as "the surveyor").

Lessee to build houses of specified value within specified time.

3. The lessee will, within the period of —— years from the date of this agreement, lay out and expend not less than £—— in the erection and completion on the said piece or parcel of land of —— good and substantial messuages or dwelling-houses, with their appurtenances, all such messuages to be built of solid brick or stone, or brick and stone, with roofs of the best slate or ornamental tiles, with suitable gardens, outbuildings, offices, sewers,

(*h*) For a form of building lease to the builder's nominee, see Precedent VIII., *ante*, p. 533.

Stamp.

(*i*) This instrument will require not only an *ad valorem* stamp on aggregate rent (see *ante*, p. 506), but also to be further stamped as a mortgage with an *ad valorem* duty for the amount to be secured: see Vol. II. *tit.* "Mortgages."

drains, fences, and other conveniences, according to the plans and specifications in the first schedule hereto [*or*, "according to plans and specifications to be first submitted to and approved by the surveyor"], and so that not less than £—— shall be expended in respect of each of the said dwelling-houses, with the outbuildings and appurtenances thereto, such sum of £—— to include the cost price of labour and materials alone.

Lessee to construct houses of proper materials, &c.

4. The lessee shall construct and execute the said dwelling-houses, buildings, and works with good, well seasoned, and proper materials of all kinds in a substantial and workmanlike manner, and in conformity with any statutory, municipal, or local enactments or regulations applicable thereto, and under the inspection and to the satisfaction of the surveyor.

Lessee may lay out roads, &c.

5. The lessee may make and lay out such roads, ways, streets, and squares in, through, over, or upon the said piece or parcel of land as he shall think proper, the plans of all such proposed roads, ways, streets, and squares being first submitted to and approved by the surveyor, and it is hereby expressly agreed that the lessee shall, at his own cost, complete all such roads, ways, streets, and squares, and the approaches thereto, and the sewers and drains connected with the houses to be built as aforesaid within —— years of the date of this agreement, to the satisfaction in all respects of the surveyor.

Lessee to deposit plans (*ii*).

6. [When and so soon as any plans or elevations of the said dwelling-houses, buildings, gardens, roads, ways, streets, squares, sewers, drains, and other works hereby authorised shall have been approved by the surveyor, the lessee will, at his own cost, cause good and accurate copies or drawings thereof to be deposited with the surveyor.] No dwelling-house, building, or work whatever shall be erected or constructed by the lessee upon the said piece or parcel of land, or any part thereof, except in accordance and conformity with the stipulations and provisions herein contained.

No work to be done except in accordance with the agreement.

Lessee not to make bricks, &c.

7. The lessee shall not make any bricks nor burn any clay or lime on the said piece or parcel of land, nor commit or allow any unnecessary nuisance on the premises, nor remove any stone, earth,

(*ii*) If the plans and specifications are scheduled to the agreement, the clause in brackets will be omitted. If the first schedule is omitted, the reference in the text to the numbers of the other schedules must be altered accordingly.

XIV. AGREEMENT FOR BUILDING LEASES AND ADVANCES BY LESSOR.

clay, gravel, sand, or minerals without the consent of the lessor or the surveyor previously obtained for that purpose.

Time for completion of houses.

8. The lessee shall erect and complete fit for occupation and use one of the said dwelling-houses, with the garden, offices, outbuildings, drains, fences, and other conveniences thereto belonging, on or before the —— day of ——, 19—, another of the said dwelling-houses, with such appurtenances as aforesaid, on or before the —— day of ——, 19—, and erect and complete as aforesaid each of the other dwelling-houses within —— months after the completion of the one last completed.

Leases to be granted on completion.

9. When and so soon as the lessee shall have erected and completed any of the said dwelling-houses, with such appurtenances as aforesaid, and the surveyor shall have certified to that effect, the lessor will, if this agreement shall not then have been determined, grant to the lessee or his nominee a lease of such dwelling-house with the land laid out to be occupied therewith for the term of —— years from the —— day of ——, 19—, at the yearly rent specified for such dwelling-house and land in the second schedule hereto on the lessee or his nominee executing counterparts of such leases respectively, and paying for each of such leases and a counterpart thereof respectively a sum not exceeding £—— in respect of the costs and expenses of and incident to the preparation, stamping, and execution thereof respectively.

Lessee to pay rents until execution of leases.

10. Until a lease or leases shall have been granted of the entirety of the said premises under the last preceding article, the lessee will pay to the lessor the several yearly rents following, that is to say: For the first year of the said term from the —— day of ——, 19—, the rent of a peppercorn, if demanded; for the second year thereof the rent of £——; for the third year thereof the rent of £——; and for the fourth, and for each and every subsequent year during the continuance of this agreement, the full yearly rent of £——, all such several rents to be paid quarterly on the usual quarter days, the first payment of such yearly rents, after the first year, to be made on the —— day of ——, 19—, and such several rents to be clear of all land tax, tithe rentcharge, main drainage rate, and all existing taxes, rates, charges, duties, assessments, and deductions whatsoever, whether parliamentary, parochial, metropolitan, local, or otherwise, to which the premises or the lessor or lessee respectively in respect of the premises are or is or hereafter shall or may be liable, except only the landlord's property tax: PROVIDED ALWAYS, that the rent or rents payable under any lease

or leases to be granted pursuant to this agreement shall from time to time be set off against, and be accepted in or towards satisfaction, as the case may be, of the rent or yearly sum for the time being payable under this clause for the entirety of the said premises, but so that when leases shall have been granted of the entirety of the said premises, the aggregate of the rents thereby reserved shall amount to the full rent or yearly sum of £——.

Lessee to observe covenants and insure unfinished houses.

11. Until all the said intended leases shall have been granted, the lessee will pay all the said taxes, rates, charges, duties, assessments, and deductions, except as aforesaid, and will, as far as circumstances will admit, observe and perform the covenants and conditions which the respective lessees would be bound to observe and perform if the said leases had been granted respectively, and the lessee shall keep the dwelling-houses and buildings to be erected hereunder, so soon as the same respectively shall have reached the height of twenty feet above the level of the ground, insured in the joint names of the lessor and lessee to the amount of three-fourths of the value for the time being thereof in one of the public offices of insurance, to be approved by the lessor, and will when required produce to the lessor the policy and the last receipt for the premium in respect of every such insurance.

Form, &c. of leases.

12. The lease or several leases to be granted in pursuance of this agreement shall be in the form and to the effect set forth in the third schedule hereto, so far as circumstances will permit.

Lessee to accept leases and execute counterparts;

13. The lessee will accept and take a lease or leases of the said pieces or parcels of land, with the messuages or dwelling-houses, erections, and buildings, to be thereupon erected and built as aforesaid, under the terms and conditions hereinbefore expressed, and execute a counterpart or counterparts thereof respectively, and pay such sum of money as aforesaid for each and every such leases and counterparts; and also the expenses of preparing and executing these presents and the counterpart thereof.

and pay expenses.

Lessee to pay surveyor's charges.

14. The lessee will also pay all reasonable fees and charges of the surveyor for inspecting and approving of plans and elevations of the intended buildings and works, and for inspecting and superintending the progress thereof, and for giving certificates, and for drawing the plans to be annexed to the said leases and counterparts thereof.

Lessor to make advances to lessee during

15. The lessor will, during the progress of the works hereby agreed or authorised to be executed, from time to time on the request of the lessee, and when the surveyor shall certify in writ-

XIV. AGREEMENT FOR BUILDING LEASES AND ADVANCES BY LESSOR.

ing that such progress has been made as is mentioned in the fourth schedule hereto, and also that all the buildings and works hereby agreed or authorised to be constructed and executed have been properly proceeded with, make advances to the lessee at such rate of interest as is hereinafter mentioned and in the manner and to the extent set forth in the fourth schedule hereto.

progress of works.

Repayment of advances.

16. The lessee will repay to the lessor every sum advanced to him pursuant to the last preceding article at the expiration of six calendar months from the time of such advance, with interest thereon as from the time of such advance at the rate of —— per cent. per annum, payable half-yearly, the first payment thereof to be made at the expiration of six calendar months from the time of such advance, and all such principal and interest moneys, and all costs of and incident to all such advances, and the securities for the same, shall, until repayment and as well after as before the granting of every such lease or leases as aforesaid, be a first charge on the interest of the lessee in the said piece or parcel of land and the dwelling-houses, buildings, and works hereby agreed or authorised to be constructed and executed thereon; and shall be secured by a deposit of this agreement and a memorandum of such deposit. When any lease is granted the amount of the moneys advanced in respect of the house or houses comprised therein, with interest at the rate aforesaid, shall be secured by a legal mortgage of the premises comprised in such lease, which the lessee will execute and deliver to the lessor. And thereupon the premises comprised in such legal mortgage shall be free and discharged from such of the said advances as shall not be thereby secured. Every such memorandum or mortgage as aforesaid shall be prepared by the solicitor of the lessor at the cost of the lessee, and shall contain such provisions as such solicitor shall think fit.

Powers of sale, &c. on default of repayment.

17. In case at any time after the expiration of six calendar months from the making of any such advance as aforesaid the lessee shall make default in the repayment of such advance after such demand thereof as is hereinafter mentioned, or in case he shall make default in any half-yearly payment of interest payable in respect of any such advance or any part thereof for the space of fourteen days after the time hereby appointed for such payment, or if the lessee shall become bankrupt (which expression includes making any assignment for the benefit of his creditors, or entering into any composition or scheme of arrangement with his creditors), then and in any such case it shall be lawful for the lessor to enter

into and upon the said piece or parcel of land, and to erect, complete, or execute any houses, buildings, or works thereon which may be unfinished in such manner as he shall think proper, and for that purpose to enter into any contracts with builders or others, and engage workmen and provide scaffolding, tools, plant, and materials, or to use any scaffolding, tools, plant, or materials which may be in or upon the premises, without making to the lessee any payment, allowance, or compensation whatever, and to let, or manage, and deal with the said piece or parcel of land as the absolute owner thereof, without being responsible for loss, or to sell the said piece or parcel of land and the dwelling-houses, buildings, and works thereon, or any part thereof, either together or in parcels, and either by auction or private contract, upon such conditions and in such manner as he shall think fit, and to buy in, vary, or rescind any contract for sale, and to resell without being answerable for any loss occasioned thereby, and to give valid receipts for the purchase-money, and to do all other acts and things which he may think expedient for effectuating any such sale; and the lessor shall apply any rent, proceeds of sale, or other moneys to arise by the exercise of his powers aforesaid, in the first place to pay the costs and expenses incurred in or about the exercise of such power, and in the next place in or toward satisfaction of any principal or interest moneys for the time being owing to him in respect of any such advance as aforesaid, including the expenses of any works executed by him as aforesaid, and in or towards satisfaction of any rent or rents for the time being owing to him under clause 10 hereof, and of any moneys expended by him in insuring any buildings on the premises, and shall pay the surplus (if any) to the lessee.

Protection of purchasers, &c.

18. No lessee or purchaser upon any such sale as aforesaid shall be bound or concerned to inquire whether any of the cases in which such power is hereby made exercisable has happened, or as to the propriety or otherwise of such sale.

How demands may be made.

19. Any demand for payment of money under the 17th article hereof may be made in writing left for or sent by post to the lessee, at his last known place of abode or business in England, or left at or affixed to any part of the said piece or parcel of land, dwelling-houses, buildings, and premises.

Power of re-entry on lessee's

20. In case the lessee shall make default in erecting, completing, and covering in the said messuages or dwelling-houses, erections,

XIV. AGREEMENT FOR BUILDING LEASES AND ADVANCES BY LESSOR.

and buildings, to be erected and built as aforesaid, or any of them, in manner and within the respective times hereinbefore provided, or if the lessee, or any of his nominees, shall neglect or refuse to accept any such lease or leases as aforesaid, and to execute a counterpart or counterparts thereof, or to pay the costs and expenses of and incident to the preparation and execution of the same respectively, within one calendar month after he or they shall have been requested by the lessor so to do, in all of which respects time shall be of the essence of the contract, or in case of breach of any of the stipulations herein contained, or if the lessee shall not proceed with the works with proper diligence, then and in any such case it shall be lawful for the lessor, if he shall think fit, to re-enter and take possession of the premises hereby agreed to be demised, or such part of the same whereof no such lease as aforesaid shall have been actually granted, and of all buildings, erections, plant, and materials (*k*), which may be thereon, without making to the lessee, or his nominees or nominee, any allowance or compensation in respect thereof, and thereupon this agreement, and everything herein contained shall, as regards the whole or such part of the premises as shall be so re-entered upon, cease and become void.

default to complete works.

Option for lessor to determine agreement on lessee's death.

21. In case the said [*lessee*] shall die before the messuages or dwelling-houses, buildings, and other works hereby agreed to be erected and executed shall have been fully completed, the lessor may at his option either require the executors or administrators of the said [*lessee*] to complete the same according to the stipulations of this agreement, or may by notice in writing to such executors or administrators determine this agreement: PROVIDED ALWAYS, that if the lessor shall elect so to determine this agreement he shall pay to the executors or administrators of the said [*lessee*] such a sum as shall recoup his estate for all such moneys

(*k*) With regard to the enforcement of the right of entry given by this proviso, the power given by the Conveyancing Act, 1881, to the Court to relieve against forfeiture must be borne in mind. Sect. 14 of that Act does not apply to an agreement for a lease (*Ayling* v. *Mercer*, (1885) W. N. 166; *Swain* v. *Ayres*, 20 Q. B. D. 585) unless there is a present right to specific performance: *Swain* v. *Ayres*, 21 Q. B. D. at pp. 292, 293; *Lowther* v. *Heaver*, 41 Ch. D. 248, at pp. 260, 261; *Strong* v. *Stringer*, W. N. (1899) 135. Neither the Bills of Sale Act, 1878, nor the Bills of Sale Act (1878) Amendment Act, 1882, affect the power here given to seize plant, &c. belonging to the lessee: see *Ex parte Newitt*, 16 Ch. D. 522; *Reeves* v. *Barlow*, 12 Q. B. D. 436; *Morris* v. *Delobbel Flipo*, [1892] 2 Ch. 352.

as shall be certified by such architect or surveyor as aforesaid to have been properly laid out by the said [*lessee*] in carrying out the works and operations aforesaid, after deducting thereout any principal or interest moneys for the time being owing to the lessor in respect of any such advance as aforesaid or due to him in respect of rent or expenditure under the provisions hereof.

Arbitration clause.

22. If any dispute or difference shall arise touching the said messuages or dwelling-houses, buildings, and works hereby agreed to be erected and executed, or touching the construction or effect of this agreement, or of any clause or stipulation herein contained, or the rights and liabilities of the lessor and lessee respectively hereunder, the said dispute or difference shall be referred to the determination and award of two indifferent persons, one to be named by the lessor, another by the lessee, or an umpire to be appointed in writing by the said two persons so to be named as aforesaid before entering on the reference; and this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof, the provisions whereof shall apply as far as applicable (*l*).

Proviso that agreement shall not operate as demise.

23. This agreement shall not, nor shall anything herein contained or to be done in pursuance hereof, except the granting of a lease as aforesaid, operate as an actual or present demise of the premises, or any part thereof, or create any leasehold interest therein or tenancy thereof: But the lessee shall only have a right to enter upon the premises for the purpose of performing this agreement. Any rents or yearly sums hereby agreed to be paid by the lessee, which shall be in arrear, shall be recoverable by the lessor as if the same were rent in arrear and the lessee were the tenant of the premises (*m*).

In witness, &c.

(*l*) For other forms of arbitration clauses applicable to agreements for building leases, see the precedents of building agreements, *sub tit.* "Agreements," *ante*, pp. 7, 10, 13.

(*m*) If it is intended that the lessee shall have the option of purchasing the reversion, add the following clause:—

24. If the lessee shall at any time before the —— day of —— be desirous of purchasing the fee simple of all or any one or more of the said messuages or dwelling-houses with the ground and appurtenances belonging thereto, and of such desire shall give to the lessor or leave for him at his usual or last known place of residence in England three calendar months' notice in writing ending on some

XIV. AGREEMENT FOR BUILDING LEASES AND ADVANCES BY LESSOR.

THE FIRST SCHEDULE ABOVE REFERRED TO.
(*Plans and Specifications.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.
(*Rents, &c., see Clause* 9.)

THE THIRD SCHEDULE ABOVE REFERRED TO.
(*Form of Lease, see Clause* 12.)

THE FOURTH SCHEDULE ABOVE REFERRED TO.
(*Schedule of Advances to be made, see Clause* 15.)

one of the quarterly rent days hereinbefore mentioned, then and in every such case, at the expiration of such notice, the lessee shall become and be the purchaser of the said messuages or dwelling-houses, or such one or more of them, with the ground and appurtenances belonging thereto as shall be specified in such notice, at the rate of £—— for each of the said messuages or dwelling-houses, with its ground and appurtenances; and shall, on payment of the purchase-money, all moneys then due or accruing due in respect of advances, rent, costs, expenses, or otherwise under these presents so far as the same relate to the premises specified in such notice, within two calendar months thereafter, be entitled to a conveyance of the reversion in fee of the purchased premises from all proper parties; [but the title thereto up to the date of this agreement shall be admitted to be in the lessor without investigation]; and this agreement shall, upon the execution of such conveyance, cease as from the expiration of the said notice as to the premises so purchased, but not further or otherwise; and the costs of the said conveyance, except as to the perusal and execution thereof by the parties conveying, shall be borne by the purchaser; but the costs of deducing and proving the title to the reversion in fee as from the date of these presents, and of the perusal and execution of the conveyance by and on behalf of the parties conveying shall be borne by the lessor; and every such conveyance shall contain such restrictive covenants as to not carrying on offensive trades as are contained in the form of lease set forth in the third schedule hereto; but the purchaser, his heirs and assigns, shall be entitled to the like right of using the roads coloured brown on the said plan as is therein mentioned; and the purchaser shall be entitled to a statutory acknowledgment of his right to the production of all documents of title in the lessor's possession, or control, relating to the premises purchased by him, and an undertaking for the safe custody thereof.

LEASES, &c. (AGRICULTURAL) (*a*).

XV. AGREEMENT *for the* LETTING *of a* FARM *from* YEAR *to* YEAR, *containing* STIPULATIONS *as to the* MODE *of* HUSBANDRY, *&c., with* SCALE *of* ALLOWANCES *for* TENANT'S IMPROVEMENTS.

XV. AGREEMENT FOR LETTING A FARM FROM YEAR TO YEAR.

MEMORANDUM OF AGREEMENT (*b*), made this —— day of ——, 19—, BETWEEN [*landlord*], of ——, in the county of ——, Esquire (hereinafter called "the landlord," which expression shall include his heirs and assigns (*c*) (where the context so admits)), of the one part, and [*tenant*], of ——, in the county of ——, farmer (hereinafter called "the tenant," which expression shall include his executors, administrators, and assigns (where the context so admits)), of the other part; WHEREBY the landlord agrees to let, and the tenant agrees to take, ALL the farm and lands called ——, situate in the parishes of —— and ——, in the county of ——, the particulars whereof are specified in the first schedule hereto, from Michaelmas Day, 19—, upon the terms following, that is to say:—

Demise of certain lands from year to year.

1. The tenancy to be from year to year.

[2. The tenant to enter on fallows at Lady Day, 19—, on the other lands, and the house and buildings (except barns) at Michaelmas, 19—, and on the barns at May Day, 19—.]

Times of entry on the different parts.

3. Either party to be at liberty to determine the tenancy by a notice in writing of six calendar months or upwards expiring on any Michaelmas Day (*d*): AND it is hereby agreed that sect. 22

Power to determine tenancy.

(*a*) See the Agricultural Holdings Act, 1908, and the Tenants' Compensation Act, 1890, as altered thereby; the Allotments and Cottage Gardens (Compensation for Crops) Act, 1887; the Tenants' Compensation Act, 1890; the Small Holdings and Allotments Act, 1908; the Small Holdings Act, 1910; and the Agricultural Holdings Act, 1914.

(*b*) Stamp, *ad valorem* on amount of rent: see Preliminary Note, p. 506.

Stamp.

(*c*) In the case of an underlease, say,

"his executors, administrators, and assigns,"

and for a lease under a power, say,

"the person or persons from time to time entitled to the reversion of the premises hereby demised expectant on the term hereby granted."

(*d*) As to this stipulation, see the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), s. 22; *Barlow* v. *Teal*, 15 Q. B. D. 501; *Van Grutten* v. *Trevenen*, [1902] 2 K. B. 82.

XV. AGREEMENT FOR LETTING A FARM FROM YEAR TO YEAR.

of the Agricultural Holdings Act, 1908, shall not apply to this tenancy.

[4. Tenant to quit in like manner as before expressed concerning his entry.]

Rent.

5. Rent, £—— per annum, payable half-yearly, at Lady Day and Michaelmas Day, without any deduction on account of any tax, rate, assessment, or other outgoings whatsoever, except the land tax, and landlord's property tax, which are to be paid or allowed by the landlord.

As to taxes, &c. (*e*).

As to immediate repairs.

6. Landlord, at his own costs, to cause the repairs to the barns mentioned in the second schedule hereto, to be done as soon as conveniently can be after Lady Day, 19—, and to do the other repairs mentioned in the same schedule before Christmas, 19—.

As to repairs generally.

7. Landlord to keep buildings in tenantable repair: tenant to keep the gates, stiles, bars, and fences in good repair, landlord providing rough timber.

As to timber, fences,

8. Tenant not to lop or top any timber tree, or teller, or sapling on the premises, except pollards usually and of right lopped and topped; tenant to cut and plash the quick-set hedges and other fences on the premises, in a husbandlike manner, to throw up the soil to the roots of such quick and other fences, and to keep the ditches cleaned and scoured, and the drains and watercourses free and open.

and grass land.

9. Tenant not to mow any grass or meadow land above once in any one year of his tenancy, and if he break up any old meadow or old pasture land, unless by the landlord's consent in writing, then to pay the further yearly rent of 10*l.* for every acre so broken up, and so in a proportion for any less quantity than an acre.

As to course of husbandry.

10. Tenant to crop the arable land in each year as follows (*f*):

(*e*) Tithe rentcharge is now payable by the owner, and the occupier cannot contract with the landlord to pay it (see Tithe Act, 1891, s. 1), or for repayment to the landlord of payments of tithe rentcharge made by him: *Ludlow* v. *Pike,* [1904] 1 K. B. 531; but see sect. 9 as to rentcharges under the Extraordinary Tithe Redemption Act, 1886, and rentcharges on any gated or stinted pasture, &c.

Conditions as to cultivation, &c.

(*f*) The particular stipulations contained in this and the following precedents of husbandry leases are to be considered as specimens merely of the manner in which such clauses may be framed; the progress of agriculture, and the varying customs and capabilities of different

namely, one equal third part thereof, with wheat or barley, one other equal third part with beans, peas, tares, clover, or oats, and the remaining third part to lie in fallow.

11. All turnips grown on any part of the farm to be consumed by sheep or cattle on the premises.

12. Same land not to be cropped with wheat twice, or barley twice, or with wheat and barley in any period of three years.

13. Tenant to use and consume on the farm all hay and straw made and grown thereon; And to use and spread dung and manure arising or made on the farm, in such manner that every acre in tillage of the farm may be well manured once in every three years of his tenancy. Except that all hay and wheat straw on the farm unconsumed at the expiration of the tenancy, may be purchased by the landlord or succeeding tenant, at a fair valuation by two indifferent persons, one to be named by each party or their umpire; And that the tenant is to leave on the premises, without compensation, not only all Lent and white straw arising upon or from the premises, and remaining unconsumed thereon at the expiration of his tenancy, but also all dung and manure arising or made on the farm, and then remaining unconsumed.

14. Tenant to keep clean by well hoeing, twice at the least, and weeding, all the land whilst cropped with beans, peas, tares, or clover.

15. Tenant to endeavour to prevent any injury by persons, cattle, or sheep, to any of the hedges or trees, or fences, and to preserve the same, and not to do any injury to any timber or other trees, in taking such loppings as before allowed to him.

16. Landlord to have the exclusive right to all game and rabbits, and to preserve the same on the premises, with liberty to shoot, fish, hunt, course, and sport thereon, subject to the provisions of the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906 (*ff*).

Landlord may shoot game.

counties and farms, make it impossible to anticipate the provisions that would be appropriate in particular cases; but some special clauses to be inserted, if appropriate, are given *post*, p. 580. The conditions as to cultivation and management in the above agreement are somewhat stringent, but having regard to the state of agriculture at the present time, it may, perhaps, not be generally advisable for landlords to seek to impose excessive restrictions in this respect.

(*ff*) For a provision as to protection of game, &c., see *post*, p. 585.

XV. AGREEMENT FOR LETTING A FARM FROM YEAR TO YEAR.

17. Tenant to permit all cottagers to continue personally to hold the cottages on the farm, at the present rents of 40*s.* per annum respectively, and conformably to the conditions on which they now hold the same respectively.

Cottagers.

18. Tenant not to crop or sow any of the land with rape, flax, hemp, or woad.

Prohibited crops.

19. Tenant not to underlet or assign the premises, or any part thereof (except the cottages).

Tenant not to underlet.

20. Landlord and his agent to be at liberty to enter at any time upon the premises and the buildings thereon, and to inspect the state and condition thereof.

Right of landlord to enter and inspect.

21. Tenant on quitting the farm, to receive such compensation for improvements as is mentioned in the third schedule hereto, at the rate therein specified: AND the parties hereto declare that such compensation is fair and reasonable compensation having regard to the circumstances existing at the time of making the agreement, and that the same shall accordingly be deemed to be substituted for compensation under the Agricultural Holdings Act, 1908, for improvements mentioned in the third part of the first schedule to that Act.

Tenant to receive compensation for improvements (*g*).

IN WITNESS whereof the parties hereto have set their hands, the day and year first aforesaid.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Particulars of the Property.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

Repair the tiling and under-pinning of the house: repair the under-pinning of the stable, three barns, and granary: and fresh thatch the barns and granary: repair thatching of the outbuildings: repair or replace defective weather boarding of barns, and set up —— gates, —— sets of bars, and —— stiles in places where landlord and tenant shall consider most proper.

Enumeration of repairs.

(*g*) The rights of a tenant to compensation for improvements are regulated by sects. 1—9 of the Agricultural Holdings Act, 1908, and the First Schedule to that Act. Sect. 5 enacts that any contract made by a tenant depriving him of his right to claim compensation for improvements under the Act shall be void so far as it deprives him of that right. But by sect. 4 a "fair and reasonable compensation for improvements having regard to the circumstances" may be substituted for the compensation under the third part of the First Schedule if secured by an agreement in writing.

THE THIRD SCHEDULE ABOVE REFERRED TO.

Scale of Allowances (h).

1. For one-third of the cost of linseed cake, cotton cake, rape cake, or malt culm, and one-sixth of the cost of corn cake, malt, or other manufactured feeding stuffs of similar manurial value, which have been consumed on the farm during the last year of the tenancy; and for one-sixth of the cost of linseed cake, cotton cake, rape cake, or malt culm, or one-twelfth of the cost of corn cake, malt, or other manufactured feeding stuffs of similar manurial value, which have been consumed on the farm during the preceding year of the tenancy.

2. For the cost of dry bones used with green crops consumed on the farm as follows, viz.:—The whole cost (inclusive of railway or water carriage) if used during the last year of the tenancy, and half the cost if used during the preceding year.

3. For the whole of the cost of artificial manures, of approved manurial value, used for green crops consumed on the farm during the last year of the tenancy, and for the cost of railway or water carriage of the same.

PROVIDED that the allowances, under clauses 2 and 3, for the cost of bones and artificial manures shall not exceed the cost per acre of the two next preceding years.

4. For the cost of lime used on the land of the farm, including the cost of carriage, cartage, and spreading thereof, on a seven years' principle, that is to say, the allowance to be reduced by one-seventh part every year, until the seven years have expired.

5. For the cost of claying, marling, or chalking the farm, on a twelve years' principle, the whole of the cost being allowed for the first four years, and after that period one-eighth part to be deducted yearly for the remaining eight years.

6. For the cost of bones used on pasture land of the farm as follows, viz.:—

For dry bones, on a ten years' principle.

For dissolved bones, on a five years' principle.

7. For two-thirds of the cost of other purchased manures used on pasture land of the farm, during the last year of the tenancy, and for one-third of the cost of any such manures used during the preceding year.

(*h*) The scale of allowances for tenants' improvements varies in different parts of the country.

XVI. OUTLINE OF TERMS FOR LEASE OF FARM.

XVI. OUTLINE *of* TERMS *for the* LEASE *of a* FARM (*i*).

Terms.

TERMS (*j*) for the lease of the —— Farm, at ——, in the county of ——, containing —— acres, —— roods, and —— poles, or thereabouts: Term, fourteen years from Lady Day, 19—: All game, wildfowl [rabbits], and fish (subject to the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906) (*k*), and all trees, plantations, and minerals to be exclusively reserved to the landlord, with liberty for him and all persons authorised by him to enter on the land for purposes of sporting, and of cutting, digging, and carrying away timber, underwood, and minerals, and of inspecting the state of the premises: Rent, £—— a year, payable half-yearly at Michaelmas and Lady Day; landlord to pay the tithe rentcharge and land tax; tenant to pay all other taxes (except landlord's property tax) and all rates and assessments whatsoever; landlord to put the farmhouse, buildings, and gates in good tenantable repair at the commencement of the term; tenant thereafter to keep the premises and leave them at the end of the term in like repair, being allowed for the purpose rough timber to be delivered by the landlord within —— miles of the farmhouse (*l*); tenant, when required by the landlord, to execute a lease to be forthwith prepared by the landlord's solicitor in accordance with this agreement, and to

Outline of terms.

(*i*) This precedent is intended for use where the parties wish to reduce at once, to writing, the leading terms of their arrangement, with a view of embodying the same in a more formal instrument.

Stamp.

(*j*) This document must be stamped as if it were an actual lease, with an *ad valorem* stamp, according to the amount of the rent. The lease granted in pursuance of the agreement will require a stamp of sixpence only: see Stamp Act, 1891, s. 75 (1), mentioned in the Preliminary Note, *ante*, p. 507, par. 2.

(*k*) In the absence of reservation, the game (*Pochin* v. *Smith*, 52 J. P. 4) and the right of fishing (*Jones* v. *Davies*, 86 L. T. 447) belong to the tenant. As to the construction of the Ground Game Act, 1880, see *Stanton* v. *Brown*, [1900] 1 Q. B. 671; and *Anderson* v. *Vicary*, [1900] 2 Q. B. 287.

Stipulations as to mode of husbandry, &c.

(*l*) Here may be inserted, if desired, any special provisions, not contained in the existing lease afterwards referred to, as to mode of husbandry, &c., *e.g.*, "tenant not to grow two successive white crops on the same land, nor to mow any pasture in two successive years," or "tenant to consume all hay, straw, and root crops on the premises," &c., as to which, see next precedent.

XVI. OUTLINE OF TERMS FOR LEASE OF FARM.

contain covenants and stipulations similar to those contained in the lease under which Mr. [*outgoing tenant*] now holds the premises, including a proviso for re-entry by the landlord on non-payment of rent or breach of covenant by the tenant; tenant to pay all expenses of this agreement, and of the lease to him, and of the counterpart thereof; tenant to pay to Mr. [*outgoing tenant*] all compensation which is or may be payable to him for improvements, tillages, unconsumed produce, unapplied manure, or seeds or sown crops by custom, or under any statute, and to indemnify the landlord therefrom.

N.B.—These terms are to operate as an agreement only, and not as an actual demise; but until a lease shall be executed in accordance herewith, the rents, covenants, and conditions hereby agreed to be reserved by and contained in such lease are to be paid and observed, and all the rights and remedies of the parties are to be enforceable in the same manner as if such lease had actually been executed (*m*).

We agree to the above terms.

[*Signature of Landlord or his agent* (*n*).]
[*Signature of Tenant.*]

XVII. AGREEMENT *for a* LEASE *of a* FARM, *for* TWENTY-ONE YEARS, DETERMINABLE *at the* END *of the first* SEVEN *or* FOURTEEN YEARS.

AN AGREEMENT (*o*), made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (who, and his heirs and assigns, unless the contrary appears, are hereinafter referred to as "the landlord" (*p*)), of the one part, and [*lessee*], of, &c. (who, and his

(*m*) This clause will prevent this agreement from being deemed to be an actual lease, and therefore void under the stat. 8 & 9 Vict. c. 106, s. 3, as not being under seal. Agreement not to operate as demise.

(*n*) If an agent signs, he should do so as agent for the landlord, so as to imply a warranty that he had authority so to sign: see *Collen* v. *Wright*, 8 El. & Bl. 647; 27 L. J. Q. B. 215. Signature by agent.

(*o*) Stamp, *ad valorem* on amount of rent: see *ante*, p. 506 and p. 570, note (*j*).

(*p*) If the lease is to be executed on behalf of the lessor by his steward or bailiff, say, Steward, &c.

"[*the lessor*], of, &c., by [A. B.], of, &c., his steward or bailiff lawfully authorised for this purpose."

XVII. AGREEMENT FOR A LEASE OF A FARM.

executors, administrators, and assigns, unless the contrary appears, are hereinafter referred to as "the tenant"), of the other part.

Parties.

1. The landlord will (if and whenever required by the tenant) grant to the tenant a lease of ALL THOSE, &c., which premises are particularly described in the first schedule to these presents, To HOLD the same from the —— day of —— next, for the term of twenty-one years thereafter, determinable by either party [*or*, by the tenant] at the end of the first seven or fourteen years, on giving one year's previous notice in writing, at the yearly rent of £——; AND at the additional yearly rent of £—— for every acre of meadow or pasture land, which the tenant shall, without the consent in writing of the landlord, break up or convert into tillage, and so in proportion for less than an acre (*q*).

Term and time of entry.

Rent.

Additional rent.

2. The said rents are to be paid quarterly (except the last quarter's rent, which shall be paid on the —— day of ——, before the expiration of the said term); the first quarterly payment of the said rent of £—— to be made on the —— day of —— next, and the first quarterly payment of the said additional rent to be made on the first of the said days, which shall happen next after such breaking up or converting into tillage, and thenceforth to be respectively paid free from all taxes, rates, assessments, and deductions whatsoever (the land tax and landlord's property tax and the yearly rent of £——, payable to the lord of the manor, only excepted, which it is hereby agreed shall be paid or allowed by the landlord).

Lease and counterpart.

3. The lease and a counterpart thereof are to be prepared by the solicitor of the landlord at the cost of the tenant; AND are to contain the following covenants, provisoes, and agreements,

Contents thereof (*qq*).

Authority to agent to contract.

Though the contract itself must, by the Statute of Frauds, be in writing, an authority to treat as agent for another may in some cases be good and effectual without any writing. As to execution of "an assurance or instrument" by an attorney under a power, see Conveyancing Act, 1881, s. 46. Though, under this section, the attorney may sign in his own name, it is usual and proper for him to sign the principal's name. The principal is named amongst the parties as if he himself executed the deed. See, as to execution by attorney, *Combe's case*, 9 Co. Rep. 75a; *Wilks* v. *Back*, 2 East, 142; and *Lawrie* v. *Lees*, 14 Ch. D. 249; 7 App. Cas. 24.

(*q*) See Agricultural Holdings Act, 1908, s. 25.

(*qq*) If desired, instead of specifying the contents of the lease, they may be incorporated by reference to the existing lease, as follows:—

XVII. AGREEMENT FOR A LEASE OF A FARM.

that is to say, covenants by the tenant to pay the said yearly rent of £——, and also the said additional rent, if and whenever the same shall become payable, at the time and in manner aforesaid; And to pay all existing and future taxes, rates, and assessments whatsoever (except land tax and landlord's property tax, and the said yearly rent payable to the lord of the manor) for the time being payable either by the landlord or the tenant, or chargeable upon the premises, and to keep the tillage land of the said premises in due course of husbandry [without setting potatoes in larger quantities than for the use of himself and his family; and without sowing any rape seed, mustard seed, or turnip seed, for the purpose of producing such seeds (*r*)]; And to keep and preserve the buildings and gates belonging to the said premises in good and sufficient repair during the said term (except the walls, timbers, and roofs thereof, which are to be repaired by the landlord); And to plash or cut and lay the hedges regularly and in proper season, and cleanse the ditches and culverts; And not to cut, damage, or destroy any of the trees, thorns, and quicksets growing in and upon the said premises, except such as shall be necessary for the repairs of the hedges, and those only at seasonable times of the year; And to preserve the said trees, thorns, and quicksets; And also during the said term, with his cattle to eat and consume upon the premises the hay and straw that shall yearly grow thereon; And to lay and spread all the manure which, during the said term, shall arise from the said farm, upon the lands and grounds which shall be ploughed and had in tillage, in a good and husbandry-like manner; And to permit the landlord and his servants, tenants, and labourers, at the usual times in the spring next before the expiration of the said term, to enter upon the premises, or any part thereof, for the purpose of preparing the same for husbandry; And to insure the buildings on the premises in the sum of £——, in the names of the landlord and the tenant, in some office of insurance to be approved by the landlord, and to protect and preserve the game, wild fowl, and rabbits, subject

Lessee's covenants.

To pay rent,

To pay taxes, &c.

Course of husbandry.

Covenant to keep the premises in good repair.

To cleanse hedging.

Not to cut trees, &c.

To preserve trees, &c.

To consume hay and straw on the estate.

To spread manure.

To permit lessor in the spring of the last year of the term to come upon the estate to prepare lands.

To insure.

"and are to contain the several covenants, provisoes, and agreements contained in the indenture of lease, dated the —— day of ——, under which the tenant [*or*, present lessee] holds the premises."

(*r*) This is not a usual provision.

XVII. AGREEMENT FOR A LEASE OF A FARM.

to the provisions of the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906 [*mention any other special covenants*]; AND ALSO a covenant on the part of the tenant, not to assign, underlet, or part with the possession of any part of the said premises, unless with the licence of the landlord in writing, for that purpose; AND ALSO the usual qualified covenant by the landlord for quiet enjoyment; AND ALSO a condition for re-entry, on the bankruptcy or insolvency of the tenant or on his breach of any of the lessee's covenants, to be contained in the same lease; AND ALSO a proviso substituting such compensation as is mentioned in the second schedule hereto (which is hereby agreed to be fair and reasonable compensation, having regard to the circumstances existing at the time of making this agreement) for compensation under the Agricultural Holdings Act, 1908, for improvements mentioned in the third part of the first schedule to that Act.

Special covenants.

Not to assign or underlet, unless with licence.

Power of re-entry.

Tenant to have a way-going crop (*s*).

4. The tenant may, in the harvest next after the expiration of the said term, have and take a way-going crop of wheat or hard corn off one-third part of the land then in tillage, as the same shall fall in due course of husbandry, so that he thrash the same in the barn of the premises before the 13th day of February then next, and leave the straw of such way-going crop and the manure to be produced in the winter and spring next before the expiration of the said term, for the use of the landlord; AND pay to the landlord, or his next succeeding tenant, on demand, —— pounds an acre for such way-going crop, and so in proportion for any greater or lesser quantity than an acre.

Lessee to accept lease, execute counterpart, and pay law charges.

5. The tenant will accept such lease on the terms and conditions aforesaid; and execute a counterpart thereof when required; and pay the charges for the same when prepared, as well as the charges for these presents and a duplicate hereof.

IN WITNESS, &c. (*t*).

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO (*u*).

(*s*) This clause will be inserted only if the tenancy commences in the spring.

Execution by steward, &c.

(*t*) If executed by a steward or bailiff, say,

"IN WITNESS whereof, the said [*lessor*], by the said [*steward*,

(*u*) See Schedule of Allowances, *ante*, p. 568.

XVIII. LEASE *of a* FARM *for* TWENTY-ONE YEARS, DETERMINABLE *at the* END *of* SEVEN *or* FOURTEEN YEARS; COVENANTS *by* LANDLORD *to* DRAIN.

XVIII. LEASE OF FARM FOR TWENTY-ONE YEARS.

THIS INDENTURE (*v*), made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (who and his heirs and assigns, unless the contrary appears, are hereinafter called "the landlord"), of the one part, and [*lessee*], of, &c. (who and his executors, administrators and assigns, unless the contrary appears, are hereinafter called "the tenant"), of the other part; WITNESSETH as follows:—

Parties and interpretation clause.

Testatum.

1. In consideration of the rent and covenants by the tenant hereinafter reserved and contained, he, the landlord, hereby demises unto the tenant ALL THAT messuage or farmhouse situate in the parish of ——, in the county of ——, called —— Farm, with all those three cottages, and all those several pieces or parcels of land particularised in the schedule hereto, containing by estimation —— acres or thereabout, and now or late in the occupation of ——; EXCEPT and always reserved unto the landlord: first, all coal, ironstone, ores, quarries, stone, sand, gravel, clay, and other mines and minerals in, under or upon the said premises, or any part thereof, with full liberty for the landlord, his agents, servants and workmen, to enter and re-enter, pass and repass into, upon and from the said premises for the purpose of working, con-

Exceptions of minerals.

&c.], as his attorney lawfully authorised for this purpose, and the said [*lessee*] himself, have hereto set their hands.

[A. B., *the lessor*]
by
[C. D., *the steward, &c.*]
[E. F., *the lessee.*]"

Sometimes it may be advisable for the lessor to approve the agreement, thus:—

"I hereby declare my approbation of the within [*or*, above] written agreement [*or, if on a separate paper,* the agreement made between my agent [C. D.] and [E. F.] bearing date the —— day of ——, 19—]; and do hereby agree to grant the lease upon the terms therein mentioned. WITNESS my hand the —— day of ——, 19—."

Approbation of an agreement made by an agent.

(*v*) Stamp, *ad valorem* on the rent: see *ante,* p. 506; but see *ante,* p. 570, note (*j*).

XVIII. LEASE OF FARM FOR TWENTY-ONE YEARS.

verting and carrying away the said coal and other mines and minerals [and for the several purposes aforesaid to sink pits and shafts, erect engines and machinery, buildings, works and other conveniences on the demised premises], doing no wilful damage to the corn, grain or seeds growing on the premises, and paying to the lessee fair compensation for any damage done, the amount

Timber, &c.

in case of dispute to be settled by arbitration; secondly, all timber and timber-like trees, pollards and saplings now or hereafter growing on the said demised premises, with full liberty for the landlord, with workmen and others, to fell, cut down, square, saw and carry away the same, and for that purpose at all reasonable times, with horses, carts and carriages, to enter, pass and repass into, upon and from the same premises, doing no wilful damage, and paying to the lessee fair compensation (the amount to be settled as aforesaid) for any damage done to the corn, grain, or seeds

Sporting rights (*x*).

growing on the same; and, thirdly, all game, wild fowl, snipes, woodcocks, quails, landrails and rabbits, and all fish, with the exclusive right for the landlord and his friends and servants, and all other persons authorised by him to preserve the same, and to hunt, shoot, fish and sport, kill and carry away the same, subject only to the concurrent rights of the tenant under the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906:

Habendum.

To HOLD the premises unto the tenant from the —— day of —— next for the term of twenty-one years thence next ensuing;

Reddendum.

PAYING THEREFOR yearly during the said term, and so in proportion for any less period than a year, the rent or sum of £—— by equal half-yearly payments, on the —— day of —— and the —— day of —— in each year, clear of all deductions (*y*), except for [land tax and] landlord's property tax [and quit-rent] (*yy*).

Covenants by lessee:

to pay rent,

2. The tenant hereby covenants with the landlord as follows:—

(1) The tenant will pay the said rent of £—— hereby reserved, on the days and in manner hereinbefore mentioned for payment thereof.

(*x*) See *ante*, p. 570, note (*k*).

(*y*) Tithe rentcharge is payable by the owner, and an agreement by the occupier for its payment is void: see Tithe Act, 1891, s. 1; *Ludlow* v. *Pike*, [1904] 1 K. B. 531; *Tuff* v. *Drapers' Guild*, [1913] 1 K. B. 40; see Key & Elph. 10th ed. vol. i. p. 971, note (*f*).

(*yy*) In this precedent the tenant is allowed to break up pasture land without increased rent. If a penal rent is to be paid on his doing so (see *ante*, p. 572, clause 1), clauses 2 (1) and 8 must be modified accordingly.

(2) The tenant will, at all times during the said term, pay and discharge all taxes, rates, duties, and assessments, whether parliamentary, parochial, local or otherwise, now or at any time during the said term assessed or imposed on the premises, or the owner or occupier in respect thereof, except [land tax] [tithe rentcharge] landlord's property tax [and quit-rent]. rates and taxes,

(3) The tenant will from time to time and at all times during this demise well and sufficiently repair, cleanse and maintain the interior parts of the said messuage, cottages and buildings, and all new buildings which may during this demise be erected on, and all additions to the said premises, and the walls, fences [road, sewers], drains and appurtenances thereof [damage by fire or tempest excepted]. And will execute and do all such works and things as may be required by any local or public authority during this demise, under or by virtue of any Act or Acts of Parliament now or hereafter to be passed. to repair; execute works required by local authority;

(4) The tenant will fetch and bring to the premises all materials necessary for the repair thereof, from any distance not exceeding five miles therefrom.

(5) And the said messuage and premises, with all additions thereto, and every part thereof, being so repaired, cleansed and maintained, the tenant will, at the end or other sooner determination of the said term, peaceably leave and yield up [damage by fire or tempest excepted]. to leave in repair.

(6) The tenant will purchase, bestow, and bring upon the said lands one load of good manure for every ton of hay or clover sold off the premises. Hay and clover.

(7) The tenant will leave one-fourth of the arable land hereby demised fallow, or in pea or bean stubble, at the end of the said term. Fallows.

(8) The tenant will at all times during the said term manage and cultivate the said lands in a good and husband-like manner, except that the tenant shall be at liberty to break up any of the pasture land hereby demised, without paying compensation or increased rent therefor. To manage and cultivate in a husband-like manner. Liberty to break pasture.

(9) It shall be lawful for the landlord, with or without workmen and others, to enter upon the premises twice or oftener in every year of the said term, to view the state of repair and Liberty to lessor to enter and view state of repair.

XVIII. LEASE OF FARM FOR TWENTY-ONE YEARS.

condition thereof, and to do all such painting and repairs as he or they may have occasion to do.

Covenants by lessor:

3. The landlord hereby covenants with the tenant, that he, the landlord, will execute and do, observe and perform, the following things:—

to pay land tax, &c.;

(1) Will pay or allow the [land tax, tithe rentcharge, quit-rent, and] landlord's property tax payable in respect of the demised premises.

to do certain repairs, &c.;

(2) Will, whenever required before the — — day of —— next, repair all the buildings, gates, fences, and hedges, and paint and tar the same.

to grub hedgerows;

(3) Will grub in a proper manner all the hedgerows belonging to the premises when required by the tenant.

to paint external parts twice or oftener;

(4) Will paint the external part of the said messuage, with the buildings and cottages on the said farm, and all the gates and fences twice during the said term if required by the tenant.

to drain part;

(5) Will drain with proper drain tiles one rod apart —— acres of the land now in rye grass at his (the landlord's) costs, except the carriage of the said drain pipes, which is to be borne and paid by the tenant; and drain the remainder of the lands hereby demised in manner aforesaid and except as aforesaid (*z*) upon being paid a further yearly rent of 4*l.* for every 100*l.* so expended, and so in proportion for any less sum expended, and which the tenant hereby agrees to pay accordingly from the time of such draining.

also residue upon certain terms;

to find materials and rough timber for repairs, &c.;

(6) Will find and provide all such materials as may be necessary for repairs, and all rough timber within five miles of the said premises, and will pay one-half part of the cost of labour on such timber and repairs, the tenant paying the other half part.

to purchase at end of term the growing crops, stock-in-trade, &c.;

4. The landlord hereby further covenants with the tenant, that he, the landlord, or the incoming tenant will take and pay the tenant for the growing crops and all hay, clover, straw, and manure at sale prices, and all machinery necessary for carrying on a farm of —— acres that shall have been erected by the tenant on the said premises, and which shall be in, upon, and about the said lands and premises at the expiration of the said term, at a

(*z*) As to this covenant, see sect. 3 of the Agricultural Holdings Act, 1908.

fair valuation thereof to be made by two valuers, one to be chosen by each party, or, in the event of their differing, then by a third person to be chosen by such valuers.

for quiet enjoyment.

5. The landlord also covenants with the tenant, that the tenant paying the rents hereby reserved as and when the same shall become payable respectively, and performing the covenants on his part herein contained, shall and may peaceably possess and enjoy the premises for the term hereby granted, without any interruption or disturbance from or by the landlord or any person claiming by, from, or under him.

Provisoes and powers:

Proviso for re-entry (*a*).

6. PROVIDED ALWAYS and it is hereby agreed as follows:—

If the rent hereby reserved, or any part thereof, shall be in arrear for twenty-one days after the same shall become due, or if there shall be any breach by the tenant of any of the covenants, conditions, or stipulations herein contained, and on his part to be observed or performed, or if the tenant shall become bankrupt or make any assignment for the benefit of his creditors, or enter into, or attempt to enter into any composition or arrangement with his creditors, or if the tenant shall do any act whereby his effects upon the premises may be or become liable to be taken in execution or become vested in any other person, or if the tenant shall absent himself from the farm for any period or periods of time together exceeding —— months in any one year of the term, or for any consecutive period exceeding —— months, or if the assigns being a company shall enter into liquidation voluntary (except for the purpose of amalgamation or reconstruction) or compulsory, then and in any of the said cases it shall be lawful for the landlord to re-enter upon the premises, or any part thereof in the name of the whole, and upon such entry the said term hereby created shall forthwith absolutely cease and determine, but without prejudice to any right or remedy of the landlord against the tenant in respect of any antecedent breach of any of the tenant's covenants hereinbefore contained.

Proviso enabling lessor to determine term as to part of the land.

7. In the event of the landlord being desirous of putting an end to this demise as far as it affects part of the said land called ——, containing about —— acres, at the end of the first ——

(*a*) Sect. 2 (2) of the Conveyancing Act, 1892, extending sub-sect. (6) of sect. 14 of the C. A. 1881, to a condition for forfeiture on bankruptcy of the lessee, &c., does not apply to a lease of agricultural or pastoral land: see C. A. 1892, s. 2 (3).

XVIII. LEASE OF FARM FOR TWENTY-ONE YEARS.

years of the said term, it shall be lawful for him so to do upon giving to the tenant —— calendar months' notice in writing of such desire at any time; and thereupon this demise shall determine as to such land and a reduction of —— shillings per acre and so in proportion for less than an acre shall be made from the said rent of £——, and clause 4 hereof shall apply to the growing crops, hay, clover, straw, manure, and machinery, in or upon such land at the expiration of such notice (*aa*).

Proviso enabling lessee to determine in seven or fourteen years.

8. If the tenant [either party] shall be desirous of putting an end to this demise at the end of the first seven or fourteen years of the said term of twenty-one years, it shall be lawful for him so to do, upon giving to the landlord [other party] six calendar months' notice in writing of such desire, whereupon this demise shall cease, determine, and be at an end as if by effluxion of time, anything hereinbefore to the contrary notwithstanding.

In witness, &c.

The Schedule above referred to.

AGRICULTURAL LEASES.

(Clauses to be used in special cases, see Precedent XV., ante, p. 566, *note (f).)*

Exceptions and Reservations.

As to Rents.

Yearly rent.

1. Paying therefor yearly during the said term the yearly rent of £—— clear of all deductions (except for [land tax] and landlord's property tax) by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year except the last half-year's rent, after a notice to determine the tenancy, which shall become due and be payable on the —— day of —— next before the determination of the tenancy.

Additional rent for landlord's improvements.

2. Paying also in like manner such further rent as shall be equal in amount to interest at the rate of 5*l.* per cent. per annum on any sum or sums of money expended by the landlord, pursuant to any notice by or at the request of the tenant, in draining the premises, or any part thereof, in altering or erecting buildings, in making roads, or in otherwise improving the premises, such

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(*aa*) As to compensation for unreasonable disturbance, see Agricultural Holdings Act, 1908, s. 11; and Agricultural Holdings Act, 1914, s. 1.

further rent to commence from the half-yearly day for payment of rent, which shall follow the day on which such expenses shall be incurred, and to continue during the then residue of the tenancy; and a memorandum made on this agreement, and signed by the landlord's agent for the time being, stating the sum spent, and the interest chargeable thereon, shall be conclusive evidence of such amounts respectively.

Additional rents for breaking up, &c. (*b*).

3. Paying also in like manner a rent at the rate of 20*l.* per annum per acre for any land described in the first schedule hereto as pasture or meadow land, which he shall break up or convert into tillage without the landlord's previous consent in writing; such additional rent to commence from the quarter day next preceding such breaking up or conversion, as aforesaid, and to continue during the then residue of the tenancy.

Lessee's Covenants.

As to Repairs, Draining, &c.

General repairs.

1. The tenant shall from time to time and at all times keep the farmhouse and buildings, and all the landlord's fixtures, windows, lights, gutters, drains, closets, cesspools, and privies occupied therewith, or belonging thereto, in good and tenantable repair, order, and condition, and properly scoured, cleansed, and emptied, as often as may be necessary, and shall cause the outside woodwork, ironwork, and spouting, to be painted with three coats of good oil paint once in every five years, and the inside woodwork and ironwork to be painted in the like manner once in every seven years, if considered necessary by the landlord, and further shall keep all the thatched roofs in good order and repair, and all slated and other roofs watertight, and shall keep and maintain all gates, gate irons, stiles, posts, pales, rails, pump wells, bridges, tunnels, drains, ditches, sluices and watercourses, and all fences belonging to the premises, in good and tenantable repair, order, and condition, and properly scoured, cleansed, and kept open, and shall deliver up

(*b*) See sect. 25 of the Agricultural Holdings Act, 1908, which provides that a penal rent for breach of a term of the contract shall not be recoverable in excess of the damage actually suffered except in the case of a condition against breaking up pasture, grubbing underwoods, felling, cutting, lopping, or injuring trees, or regulating the burning of heather. Penal rents do not entail further stamp duty: see Preliminary Note on Stamps, *ante*, p. 508.

the whole of the premises well and sufficiently repaired, maintained, and kept, at the end of the tenancy, he being allowed, on request, timber in the rough, and the bricks, tiles, or slates necessary for the purpose of all repairs of buildings; but the tenant shall not be liable to reinstate damage done by accidental fire, storm, or tempest.

To carry materials.

2. The tenant shall fetch and carry all materials to be used in repairing the buildings, or in erecting new buildings upon the farm, by agreement during the term, and all tiles used in draining upon the premises.

Damages by neglect.

3. The tenant shall make good at his own expense, both as to material and labour, all injuries to the farmhouse, buildings, and premises occasioned through the fault or neglect of himself, or his servants, or by the horses or cattle on the premises.

Garden, &c.

4. The tenant shall keep and leave the garden, orchard, and shrubberies well and sufficiently stocked, planted, manured, cleansed, and preserved, and well and sufficiently cherish, nail up, prune, and preserve all the fruit trees, bushes, vines, and shrubs, standing or growing in the garden, orchard, or shrubberies.

Draining by tenant (*c*).

5. Upon the lessor supplying on the demised premises, or within —— miles thereof, proper pipes, the tenant will pay for the labour and other expenses of draining the land [and shall be allowed such compensation therefor as is provided by the scale in the —— schedule hereto, and the notice required by sect. 3 of the Agricultural Holdings Act, 1908, is hereby dispensed with]. No drain pipe shall be laid at a less depth than —— feet, and every drain pipe shall communicate with a ditch.

Tenant to repair on notice.

6. If the landlord or his agent shall at any time give or leave on the premises for the tenant a notice in writing of any want of painting, varnishing, papering, colouring, whitewashing, repairing, amending, cleansing, or scouring, that shall be found on the premises, the tenant will make good the same within six weeks after such notice shall have been given or left as aforesaid.

As to Cultivation and Management.

Not to alter the arrangement of the premises.

1. The tenant will not materially alter the present laying out or arrangement of the premises without the consent in writing of the lessor or his agent.

(*c*) See sect. 3 of the Agricultural Holdings Act, 1908.

2. The tenant will personally by himself and his family at all times occupy the farmhouse as his usual or general residence, unless he obtains the written permission of the lessor or his agent to reside elsewhere. To reside on premises.

3. The tenant will not assign, underlet, or part with the possession or the actual and beneficial occupation of the premises or any part thereof, except the cottages, without the consent of the lessor or his agent. Not to assign.

4. The tenant will during the tenancy cultivate and manage the farm and premises in a good and husbandlike manner, according to the best course of husbandry practised in the district. General course of husbandry (concise form).

5. The tenant will at all times well cultivate and manure, and also at all times keep clean and free from docks, thistles, and other noxious weeds, and in good heart and condition all the lands of every description, and will leave the same in like manner at the determination of the term, and will sow or crop the arable lands so that at all times one full tenth part thereof shall be in clover or seeds. The tenant will in the last year of the tenancy leave one-fifth in fallow for roots, one-tenth in clover or seeds, no part of which shall be seeded, and one part at least shall be made into hay and not fed off, one-tenth in beans or peas, and not more than two-fifths in barley or oats, and one-fifth in wheat. General course of husbandry (*d*).

6. The tenant will not plough or convert into tillage any part of the meadow or pasture hereby demised, nor mow any of such land twice in any one year, nor mow such of the pasture land as has not been usually mown, and will not mow any of such land in two successive years without in the interval dressing the same in a proper manner with good rotten dung, and will in the last year of the tenancy mow all the grass land usually mown and make the produce into hay and rick and stack the same in the best manner. Management of grass lands.

7. The tenant will spend and consume in every year of the term, Tenant to consume

(*d*) See the Agricultural Holdings Act, 1908, s. 26 (1), which enables the tenant, notwithstanding any "custom" or agreement to the contrary, to practise any system of cropping of arable land and to dispose of the produce, provided he makes provision to protect the holding from deterioration. This sub-section does not apply to a tenancy from year to year as respects the year before the tenant quits, or any period after he has given or received notice to quit, or in any other case as respects the year before the expiration of the tenancy.

roots, hay, &c. on premises.

except the last year thereof, all the roots grown on the farm, and will stack, rick, or house, in every year, all the crops of corn, grain, and hay upon the accustomed part of the premises, and will replace all hay and straw sold off the premises, by manure or cake to be consumed on the premises, equal in value to the price of the hay or straw so sold; and in the last year of the term will not sell off or remove from the premises any hay, straw, chaff, or fodder, but will consume on the premises all the hay, straw, chaff, and fodder then thereon; and will yearly spend on the farm all manure made thereon.

General course of husbandry.

8. The tenant shall during the tenancy cultivate the premises in a good and husbandlike manner, and so as not to impoverish them, but to keep them in good heart and condition. And particularly he shall not cross-crop nor over-crop the land, and shall not take two white grain crops two years in succession therefrom, except when after the first crop the land shall be free from twitch, couch, and weed, in good and clean condition, and in fit and proper state to produce another white grain crop.

Same during last year.

9. The tenant will not during the last year of the tenancy, or after notice to quit has been given or received, grow hemp, flax, teasles, or woad, or any other unusual or exhausting crops on the demised premises without the previous consent in writing of the landlord or his agent; nor without such consent leave for seed on the premises any turnips, cole, rape, mangold, mustard, or rye grass, or any plants of a like nature, except so much thereof as may be necessary for seeding the premises.

Consumption of straw, &c. on the premises (*e*).

10. All the straw of oats, barley, peas, or beans grown upon the farm shall be consumed with neat beasts and other cattle, and converted into dung in some part of the premises; and upon such part of the land as is suitable for lair for sheep the tenant shall consume one-half of the turnips that may in any year be grown thereon, not more than one-half of such turnips being drawn off the land on which they are grown, and such turnips drawn off the land shall be consumed on some other parts of the premises.

Spreading manure (*f*).

11. The tenant will year by year spend, spread, and bestow all

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(*e*) The lessee's trustee in bankruptcy is bound by this covenant: *Lybbe* v. *Hart*, 29 Ch. D. 8. As to this covenant running with the reversion, see *Chapman* v. *Smith*, [1907] 2 Ch. 97.

(*f*) See Agricultural Holdings Act, 1908, s. 1 (2); *Re Hull and Lady Meux*, [1905] 1 K. B. 588.

the manure and compost which shall arise, or be made from or upon the premises, on such part of the premises as may have most occasion for the same, at the most reasonable time after such manure or compost shall have arisen or been made, except such manure or compost as shall arise or be made during the last twelve months of the tenancy, which manure shall be left in stacks or heaps in the most convenient places on the premises for the use of the landlord.

Mowing (*g*).

12. The tenant will not mow any grass land not described as meadow in the first schedule hereto, nor shall he mow any meadow land twice in any year.

Anthills, &c.

13. The tenant will cut and geld all the anthills on the said farm as often as occasion shall require, and keep the said farm free from thistles, nettles, and molehills.

Tenant to cultivate land for roots in last year of term.

14. The tenant will in the last year of the term cultivate, manure, sow, and hoe the land then in course for roots in a husbandlike manner, being paid by the landlord or incoming tenant for all necessary seed, sowings, tillages, labour of manuring, and hoeings, provided the same shall have been properly provided and executed respectively, and of proper quality and at proper seasons respectively, but not otherwise, the value thereof respectively to be ascertained by valuers or an umpire as herein mentioned.

To cleanse brooks, &c., and cut hedges.

15. The tenant will as often as occasion shall require cleanse and scour all brooks, ditches, and watercourses, and cut and plash the hedges, and will keep the hedges and fences in good condition.

Not to alter boundaries or buildings.

16. The tenant will not remove or alter any fences, landmarks, or boundaries, nor erect nor alter any buildings without the written consent of the landlord, nor cause or suffer any new road, footpaths, or ways to be made over any part of the premises.

To protect game and wildfowl.

17. Save as provided by the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906, the tenant will not, without the written consent of the landlord, use any gun, net, or other instrument for destroying game [woodcocks, snipes, quails, landrails], wildfowl, rabbits, or fish, but will protect and preserve the same, and the nests and eggs of all such birds as aforesaid, and at the request of the landlord or his agent warn off all persons

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(*g*) The A. H. Act, 1908, s. 26 (freedom of cropping), does not extend to grass land: see sub-sect. (4).

trespassing upon the premises for the purpose of killing, taking, searching for, or following the same, and on being indemnified against the costs and expenses thereof, will allow his name to be used in any information, action, or proceeding in respect of any such trespass.

Proviso as to compensation for damage to crops by game.

17A. PROVIDED ALWAYS, and it is hereby agreed that any notice in writing of claims in respect of damage to crops by game shall be given to the landlord within one month after the expiration of the year ending the 31st day of August, instead of the expiration of the calendar year (*h*).

LANDLORD'S COVENANTS.

To repair.

1. The landlord will at all times during the said term keep in repair the exterior of the farm-house, and when necessary paint the external wood and iron work thereof.

To allow tenant to get chalk.

2. The landlord will allow the tenant from time to time during the said term to get and carry away chalk from any pit on the premises for use only thereon.

To allow tenant use of barns, &c. after expiration of term.

3. The landlord or the incoming tenant will permit the tenant after the expiration of the tenancy by effluxion of time, but not otherwise, to have for the purpose of thrashing and breaking off his corn the use, until the 25th day of March next after such determination, of the barns, one of the cottages, stable room for —— horses, and cart shedding, to be assigned respectively by the landlord or his agent, and the landlord or incoming tenant shall allow the tenant to have at a spending price, to be ascertained by valuation as herein provided, hay and straw for the use of the said —— horses.

(*h*) See sect. 10 (2) of the Agricultural Holdings Act, 1908.

LEASES, &c. (MINING).

XIX. LEASE *by way of* LICENCE *to work* COPPER, TIN, *and* LEAD MINES, *within certain* LIMITS, *during* TWENTY-ONE YEARS, *yielding a* ROYALTY *of* ONE-FIFTEENTH *of the* PRODUCE *in* KIND *or* MONEY. USUAL AUTHORITIES *to* LESSEES *to make* SHAFTS, ADITS, *&c.*; USE WATERCOURSES, *&c.* POWER *for* LESSOR *to* MAKE *and* USE ADITS, *&c.*; *to* INSPECT *and* SURVEY WORKS; *to* DETERMINE LICENCE *by* NOTICE *as to any* SETS *that may not be* DULY WORKED. COVENANTS *by* LESSEES (inter alia), *to render* ROYALTIES, *pay* TAXES, *work* MINES; *to* DRIVE *a certain* ADIT *constantly*; *to deliver* PLANS *of* WORKS *and* ACCOUNTS. POWER *of* RE-ENTRY, ARBITRATION CLAUSE. XIX. LEASE OF COPPER, TIN AND LEAD MINES.

THIS INDENTURE (*a*), made, &c., BETWEEN [*lessor*], of, &c. (who, and his heirs and assigns, unless the contrary appears, are hereinafter called "the lessor"), of the one part, and [*lessees*], of, &c. (who, and their executors, administrators, and assigns, unless the contrary appears, are hereinafter called "the lessees"), of the other part: WITNESSETH as follows:— Parties. *Testatum.*

1. In consideration of the royalties, payments, covenants, and stipulations hereinafter reserved and contained, and on the part of the lessees to be paid, observed, and performed respectively, the lessor hereby grants unto the lessees, full, sole, and exclusive liberty and power to dig, work, mine, and search for copper, copper-ore, tin, tin-ore, lead, lead-ore, and all other metals, ores, and metallic minerals whatsoever (except royal Grant of licence to work mines.

(*a*) This not being a lease, either in consideration of a premium, or of a money-rent, or a fixed amount of produce (see sect. 76 of the Stamp Act, 1891), would require a stamp of 1*l.*, as a lease not otherwise charged in the schedule to the Stamp Act: *ante*, p. 507. If a fixed money-rent or produce-rent were reserved as a mine-rent or surface-rent, the lease would require an *ad valorem* stamp on that rent, and it would not be safe to dispense with the stamp of 1*l.* in addition: see *Coster* v. *Cowling*, 7 Bing. 456. The mineral rights duty under sect. 20 of the Finance (1909-10) Act, 1910, is payable annually and must be paid by the lessor: sects. 20 (4) and 21; see, too, Finance Act, 1912, s. 11. As to increment value duty, see Finance (1909-10) Act, 1910, s. 22 (2).

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metal (*b*)), within and under such parts of the farms of —— and ——, and other lands of the lessor, extending —— feet east, and —— feet west of the present —— Street, in the borough of ——, and —— feet north, and —— feet south of ——; the boundaries of which are more particularly set forth in the plan delineated in the first skin hereof, and therein coloured red (*c*); doing thereby as little damage or injury as may be

Reference to map.

Royal mines and metals.

(*b*) As to the right of the Crown to mines of gold and silver, which, by the common law, included mines of copper, tin and lead, containing gold or silver, see Plowd. 339. The law is now regulated by the statutes 1 W. & M. c. 30, s. 4, and 5 & 6 W. & M. c. 6, s. 2; see also 55 Geo. 3, c. 134. The king's grant of mines will not carry royal mines unless they are named: Plowd. 336. As to gold and silver mines in the County Palatine of Durham, see 6 & 7 Will. 4, c. 19, and 21 & 22 Vict. c. 45, s. 5. The working of metalliferous mines is now regulated by the Metalliferous Mines Regulation Act, 1872.

Demise of lead and copper mines.

(*c*) The following is a concise form of a demise of lead and copper mines:—

"The lessor hereby demises unto the lessee all lead or copper mines, and veins, beds, nests, and bunches of lead and copper-ore, and all other mines and minerals whatsoever, lying within or under ALL [*describe the lands*]; with liberty and power to the lessee, and his agents, servants and workmen to enter upon the said lands, or any parts or part thereof, and there to break the surface, and search for, work, win, and obtain the said ores and minerals, and for that purpose to dig, sink, drive, and make pits, shafts, drifts, headways, levels, adits, soughs, trenches, buddles, fences, and sluices, and to build and make engines, furnaces, smelting houses, stamping mills, ore and store houses, hovels and stables, and other erections; and to do all other things necessary or convenient, as well for working the said mines as for refining the metals and minerals, and carrying off and removing all the water, slag, rubbish, and other annoyances and troubles from the works, and for the accommodation of the persons employed therein; with allowance also of sufficient heap room and ground room for laying, placing, ordering, and dressing the ores, minerals, and metals, and that upon the most convenient parts of the premises; AND ALSO liberty to make and set up, if judged necessary, water engines, and to turn, change, or alter the course of water and rivulets within the limits aforesaid; AND ALSO liberty of access, ingress, egress, and regress, and passage at all times

to the tenants or occupiers of the premises hereinbefore described, or of any part thereof; And all metals, ores, and metallic minerals (except as aforesaid) there found, to raise and bring to grass, and there to spall, dress, cleanse, and make fit for sale, and all tin and tin-ores there found to render fit for stamping, and stamp and render fit for the smelting house, and (subject to the reservations and covenants hereinafter contained) to carry away and convert the same to their own use; And, within the limits aforesaid, to dig, make, and drive such adits, shafts, pits, winzes, drifts, leats, or watercourses (*d*), and to make such erections and buildings thereon (other than warehouses, dwelling-houses, dwelling-places, or tenements), as shall from time to time be necessary and proper for more effectually working the lodes and mines to be worked within the limits aforesaid, and for preparing and making fit for sale, and for rendering fit for stamping, and for stamping and rendering fit

To dispose of all metals and ores;

to make adits, &c.

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to the said [*lessees*], their servants and workmen, with or without horses or other animals, and carriages and materials of all kinds; And liberty of digging and cutting turf or peats, and of cutting and using brush or common wood for building or repairing any houses, hovels, and other offices belonging to or necessary for the said works; And all other necessary or convenient powers, authorities, privileges, and advantages: To hold and enjoy the premises, unto the lessees, for the term of twenty-one years, from the —— day of ——, 19—; paying (*ut supra*)."

Explanation of some mining terms.

(*d*) A drift is a passage driven horizontally upon the vein of ore from a shaft or from some other drift: a drift leading to a vein is a cross-cut; when it traverses the plane of the vein it is usually called a level. An adit is a drift slightly inclined, and opening upon the side of a hill, and serving for the drainage of the superior parts of the mine. A single adit often serves for the drainage of a large mining district, of which the "Nant Force Level" in Alston Moor, and the "Great Adit" in the district of Gwennap, in Cornwall, are well-known examples. A winze is a perpendicular pit, joining two levels, for the windage or ventilation of both. A leat or lead is any artificial watercourse, used for turning mills, and other purposes. The levels or water-gates used for the purpose of draining mines are called soughs in Derbyshire, adit appearing to be a term properly confined to Cornwall and Devon. As to the prescriptive rights in the flow of water through soughs and adits, see *Arkwright* v. *Gell*, 5 M. & W. 203, referred to in *Burrows* v. *Lang*, [1901] 2 Ch. 502; *Whitmores (Edenbridge), Ltd.* v. *Stanford*, [1909] 1 Ch. 427.

XIX. LEASE OF COPPER, TIN AND LEAD MINES.

for the smelting house respectively, in manner aforesaid, the metals, ores, and metallic minerals, to be raised within the limits aforesaid, together also with the use (for the purposes of this grant only) of all such water and watercourses arising in or running through the limits aforesaid, as are not in grant, or let, or under any agreement for granting or letting to any other person or persons, at the time of the sealing and delivery of these presents: with liberty, by and with the previous consent of the lessor, or his agent or toller for the time being, in writing, to divert such water and watercourses, and to cut leats and drains for the conveying or carrying off the same, in, through, or over any part of the lands lying within the limits aforesaid; together also with the use, for the purposes of this grant only, of such portion of the surplus waters of the —— canal and collateral cut, as in the opinion of the agent or toller for the time being of the lessor shall be proper: so, nevertheless, as not in any manner to prejudice or interfere with the property, right, and interest of the lessor in the water of the said canal and collateral cut respectively, or in any streams, brooks, or other water belonging to the lessor, which shall be necessary for the supply of water for the navigation thereof: but always reserved out of these presents unto the lessor and his stewards, agents, tollers, tenants, servants, and others to be employed or authorised by him, full liberty at any time or times to make and drive any new adit or drift, from any adit, drift or shaft, driven or sunk, or hereafter to be driven or sunk within the limits aforesaid, and to sink any shaft whatsoever therein, and keep open, repair, and use the same adits, drifts, and shafts at his and their own will and pleasure; with power to turn the water, which shall arise within such new adit, drift, or shaft, into all or any of the adits, drifts, or shafts now made, or which hereafter may be made under or by virtue of these presents; AND to enter into and drive any such new adit in or through the lands or grounds within the limits aforesaid, or any part thereof, and to sink any shaft therein, and to convey any water or watercourse into and over the said lands or grounds, or any part thereof, in such manner as he or they shall think proper; and to make any leat whatsoever for that purpose; AND to erect and support any building, flat-rod, or other machinery whatever upon or within any of the said lands for the driving of any such adit into any other lands of the lessor, or into the lands of any other person

Liberty to use existing watercourses not otherwise granted or leased.

Liberty to divert watercourses with consent;

and to cut drains.

Use of surplus waters of the —— canal.

Reservation of right to drive adits, &c., and to use new adits.

or persons whomsoever, or for any other purpose whatsoever, at his will and pleasure, doing thereby no wilful damage or injury; AND ALSO reserved power for the lessor, and his stewards, agents, tollers, tenants, and workmen, and others to be authorised by him or them, from time to time and at all times during the continuance of the powers and privileges hereby given, to go into, inspect, examine, measure, level, and dial all or any part of the adits, shafts, drifts, and other workings within the lands or grounds aforesaid, and for such purposes to make use of all or any ladders, ribbals, ropes, tackle, whims (*e*), and other things therein and thereupon, without prejudice or hindrance to the working of the said lodes and mines; AND ALSO reserved to the lessor, upon his or his agent giving three months' previous notice of the intended exercise of the power next hereinafter mentioned, to the lessees, in manner hereinafter provided, or affixing such notice in some conspicuous place within the limits aforesaid, power to annul and make void the powers and privileges hereby granted, as to such of the hereinbefore mentioned mines or sets as shall not have been duly and effectually pursued and wrought, and continued to be pursued and wrought, by the lessees, according to the covenants and provisoes herein contained (*f*): TO HOLD and

Reservation to lessor of power to inspect mines.

Power for lessor to determine licence as to particular sets, by notice, in case they are not duly worked.

Habendum.

(*e*) A whim is a kind of capstan, worked by horses, called in the north of England a whimsey or gin. Ribbals, or kibbles, are large iron buckets, worked by the whim.

Mining terms.

(*f*) As to the effect and operation of a grant of a licence to search and get ore, with a grant of such of the ore as should be found or got, as in the above precedent, the grantor parting with no estate or interest in the mines, metals, and minerals, see *Doe* d. *Handley* v. *Wood*, 2 B. & Al. 724; *Norway* v. *Rowe*, 19 Ves. 158; *R.* v. *Baptist Mills Co.*, 1 Mau. & S. 612; *R.* v. *St. Austell*, 5 B. & Al. 693. A grant or reservation of a right of mining implies what is necessary for the convenient working of the mine—a right of entering and breaking the surface (unless it be a right of continuing mines already opened into other land)—a right of way for carrying away the ore, &c.: *Simpson* v. *Telwright*, 2 Lutw. 1247; but it implies no more: *Earl of Cardigan* v. *Armitage*, 2 B. & C. 211. Any special powers given for the purpose of working the mine will enlarge simply, and not control this implied power: *ibid.*; *Hodgson* v. *Field*, 7 East, 613. The mines must be so worked as to leave a reasonable support for the surface; and any damage consequent upon negligent working in this respect will not come within a proviso for compensation for damage done to the surface in working the mines: *Harris* v. *Ryding*, 5 M. & W. 66. A lease of land, and all mines therein, confers

Nature of the interest conferred by a mining licence.

Rights conferred by a licence to mine.

Implied powers not controlled by express powers.

Injuries by mining.

What mines

XIX. LEASE OF COPPER, TIN AND LEAD MINES.

enjoy all and singular the licences, powers, and privileges hereby granted (subject as aforesaid) unto the lessees from the —— day of ——, 19—, for the term of twenty-one years from thence next ensuing; paying therefor one-fifteenth part (the whole into fifteen equal parts to be divided) of all such copper and copper-ore as shall at any time or times be dug, broken, raised, or gotten within the limits aforesaid, on the grass, at the stamps, or at the scales when made merchantable, either on the mine or at the place where the same shall be carried for the sampling and sale thereof, free and clear of all costs, charges, and expenses whatsoever; AND ALSO paying and delivering therefor one-fifteenth part (the whole into fifteen equal parts to be divided) of all such tin and tin-ore as shall at any time or times be dug, broken, raised, or gotten within the limits aforesaid, in such form as the said lessees shall sell or dispose of such tin and tin-ore, whether stuff or stamped, or in white tin at the smelting house, free and clear of all expenses, costs, and charges whatsoever; AND ALSO paying and delivering therefor one-fifteenth part (the whole into fifteen equal parts to be divided) of all such lead and lead-ore, and other metals, ores, and metallic minerals as shall at any time or times be dug, broken, raised, or gotten within the limits aforesaid, to be taken in and from such ores, metals, and minerals, on the mines when made merchantable, at the scales immediately after the weighing thereof, free from all costs, charges, and expenses (*g*); Or if

Or an equivalent in money

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included in a lease of mines.

Power to lease mines.

Right of re-entry.

no right to open mines, unless there are no mines open at the time of the lease; and a lessee of the lands may work open mines although they are not named: *Saunders's case*, 5 Rep. 12; *Astry* v. *Ballard*, 2 Lev. 185. So, a power to lease lands has been held to be confined to opened mines, unless it expressly includes unopened mines: *Campbell* v. *Leach*, Amb. 740; but now a tenant for life may grant leases of unopened as well as opened mines by virtue of his statutory power under the Settled Land Act, 1882. As to the powers of a tenant for life under the S. L. Acts, see S. L. Act, 1882, s. 2 (10) (iv.) (definition of mines and minerals); and see sects. 9—11; and S. L. Act, 1890, s. 8. As to rights of re-entry under leases, &c. of mines, see *Doe* v. *Wood*, 2 B. & Al. 724; *Roberts* v. *Davey*, 4 B. & Ad. 665.

Reservation in a mining lease under a power.

(*g*) A reservation of a proportion of the produce of a mine as royalty is a good reservation, under a power to lease at the best rent: *Campbell* v. *Leach*, Amb. 740, 748. What is a proper proportion depends, of course, upon the circumstances:—In Cornwall the expense of working seldom allows a render of more than one-fifteenth of the produce, some-

the lessor shall, at any time or times during the term hereby granted, desire to have the value of the hereinbefore reserved part or parts respectively of the said metals, ores, and metallic minerals, or any of them in money, and of such desire shall, from time to time, give or leave notice in manner hereinafter provided; then, and in every such case, from and after the expiration of two calendar months after such notice given or left as aforesaid, and until two calendar months next after the same shall have been revoked or countermanded by the lessor, by notice to be so given or left as aforesaid; paying, in lieu of the hereinbefore reserved part or parts respectively of the said metals, ores, and metallic minerals, or such of them in respect of which such notice to pay the value thereof in money shall be given or left as aforesaid, such sum or sums of money as shall be equal to the full value of the hereinbefore reserved part or parts respectively, free from all costs, charges, and expenses whatsoever, except a proportionate part of the carriage to quay, quay dues, sampling expenses, and samplers' fees: The several and respective parts, shares, dues, royalties, or sums of money hereinbefore respectively reserved to be payable on the 31st day of December, the 31st day of March, the 30th day of June, and the 30th day of September, during the said term of twenty-one years, or oftener if and as often as any such ores, metals, or minerals as aforesaid shall be on the mine or place of sale, and made merchantable.

at the lessor's option to be signified by leaving a written notice.

2. The lessees do hereby jointly and severally covenant with the lessor in manner following, that is to say: That they the lessees will, during the continuance of the said term, pay and deliver unto the lessor, or his agent or toller for the time being, the full parts, shares, dues, and royalties, hereinbefore respectively reserved, in manner aforesaid; or, at the election of the lessor, will pay the hereinbefore respectively reserved parts, shares, dues, and royalties, in money, at such best price as the same can from time to time be sold for, at the respective times hereinbefore mentioned for the payment of the same, or within two months after such copper, tin, lead, and other metals, ores, and metallic minerals shall be returned and sold as aforesaid; And will give

Covenants by lessees: to render royalties; to give to lessor notice

times not more than half of that; in the north of England, where the mines lie in beds, which are shallow and easily worked, a seventh or an eighth is often paid to the proprietor.

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four days' notice in writing to the lessor, or his agent or toller, of the time of the weighing or division of the copper, copper-ore, tin, tin-ore, lead, lead-ore, and other metals, ores, and metallic minerals to be raised and gotten by virtue of these presents; AND will pay and discharge all rates, taxes, and assessments, parliamentary or parochial, which now are or which at any time hereafter shall be charged, assessed, or imposed upon the said ores, metals, and minerals, or the money which shall arise from the sale thereof, or the dues hereby reserved, or upon the lessor in respect thereof, the landlord's property tax and increment value duty and mineral rights duty only excepted; AND will, at all times during the said term, well and effectually, and without intermission, work all lodes or mines now being worked within the limits aforesaid, and all and singular other the lodes or mines which may hereafter be discovered therein, at all usual working times, with a sufficient number of able working miners, and also by all other ways and means in approved use, according to the rules and practice of good miners, so that the whole of the lands within the limits aforesaid, hereby granted, may be fully and effectually explored, tried, and worked (*h*); AND will, from time to time and at all times during the said term, well and sufficiently repair all houses and other buildings already erected for the use of the said mines, or which shall be erected by them, being built with stone and lime, and covered with slate, within the limits aforesaid; and well and sufficiently bind, secure, repair, keep open, and support with timber, and fixed stemples and props, and by all other good and effectual and durable means, all adits, shafts, and other workings which are, or shall or may be cleared, driven, sunk, or made within the limits aforesaid, and also the low slovan or tail of any adit already driven within the limits aforesaid; AND the same houses and other buildings, together with the roofs, coverings, and fixtures thereunto belonging, and the same adits, shafts, and other workings, in good repair, and firmly bound, secured, kept open, and supported as aforesaid, and also the whole of the mines intended to be worked under or by virtue of these presents, in a regular course of working, according to the most approved practice of good miners, and in good order for the future prosecution thereof,

of times of weighing and dividing the ores;

to pay taxes charged in respect of the ores;

to work all mines within the limits during the term;

to repair buildings, shafts, &c.;

to deliver up in good repair and order;

(*h*) See *Hanson* v. *Boothman*, 13 East, 22, as to the effect of this covenant.

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will, at the expiration or sooner determination of the said term, peaceably yield up unto the lessor; And will, during the continuance of the said term, constantly, as well by night as by day, drive the deep adit, leading into the said several mines or sets, by four men at the least, until the same shall be wrought or driven through, and to the extent of, the ground comprised within the limits aforesaid; And will, within three calendar months after the expiration or other determination of the said term, well and effectually, and in a minerlike manner, at the expense of them the lessees, sollar all such shafts as ought to be kept open in pursuance of the covenants herein in that behalf contained, to the depth of at least twelve feet below the level of the then deepest adits communicating therewith; And will not cover with ores or rubbish, or otherwise waste any meat-earth, mould, or soil within the said lands, but will preserve and lay aside the same in heaps, on some convenient part of the said lands, for the use of the occupier or occupiers for the time being thereof; And will, at all times during the said term, at their own expense, make sufficient fences for the protection of man and beast, round every shaft or open part of any adit already or hereafter to be sunk or dug within the limits aforesaid, during the said term, and erect and keep proper gates and fences for protecting the tenants and occupiers of the said lands for the time being from any trespass which might otherwise happen, by reason or means, or in consequence of any act, matter, or thing done by the lessees, or any of them, or under the authority of them, or any of them: And make and keep in repair proper bridges and passes for the safe and convenient passage of the cattle and carriages of the occupiers for the time being of the said lands, or any part thereof, over any leat or open part of any adit or adits, and over or under any flat-rod or flat-rods now existing or which shall be made or erected during the said term, within the limits aforesaid; And will, upon reasonable notice in that behalf, make full compensation to the respective tenants or occupiers for the time being of the said lands, for all unnecessary damage arising from any act or neglect of the lessees, or any of them, or any of their respective agents, servants, or workmen, in the exercise of any of the licences, powers, and authorities by these presents granted; such compensation to be ascertained and declared in the manner hereinafter mentioned; And will, once in every year during the con-

to drive a certain adit constantly during the term;

to clear shafts;

not to throw rubbish on soil;

to fence shafts and tenants' lands;

to make bridges, &c.;

to make compensation for damages to tenants;

to deliver

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tinuance of the said term, within one calendar month after notice in writing to or for them the lessees, or the purser, manager, or principal captain for the time being of the said mines, for that purpose given in manner hereafter provided, at their own expense, provide for and deliver to the lessor, a full and correct plan and section of all mines or works carried on and prosecuted for the time being within the limits aforesaid, and of all lodes or veins which shall have been discovered therein; AND will, at all times, permit and suffer the lessor, and his stewards, agents, and tollers for the time being, or any other persons employed or authorised by him or them, to go down into, inspect, examine, measure, level, and dial any and every adit, shaft, or work which is, or shall or may be dug, wrought, driven, sunk, or made within the limits aforesaid, and for that purpose to make use of the tackle, ropes, buckets, ribbals, and any other conveniences belonging to, and being within the same, when and so often as he or they shall think fit; AND will, from time to time and at all times during the said term, keep at some place within the limits aforesaid, accurate and regular books of account, and therein shall from day to day make, or cause to be made, true, plain, and perfect entries of all such ores, metals, and minerals as shall be raised and gotten within the limits aforesaid, and of the sales thereof, and of all such moneys as shall be received or paid by the lessees, out of, from, or in respect of the several lodes or mines hereby authorised to be worked; AND will permit the lessor, or his steward or agent for the time being, at any time and from time to time during the said term, to inspect the said books of account, and to take extracts therefrom, or to make copies thereof; AND ALSO that they the lessees will, on the 31st day of March in every year during the said term, or within one calendar month after each such day (if required so to do), make, or cause to be made, a full, true, just, and fair account and rest in writing of all the ores, metals, and minerals raised or gotten from the lodes or mines hereby authorised to be worked, and of all the moneys received and paid by the

plans and section of works on demand;

to allow lessor, &c. to inspect works;

to keep regular accounts;

and allow lessor, &c. to inspect the same and take copies (*i*);

to make an annual rest, and balance account of profit and loss;

(*i*) The breach of a covenant in a mining lease to allow the lessor to inspect books, &c., is not within the provisions of the Conveyancing Act, 1881, as to relief against forfeiture of leases: see sect. 14, subsect. (6) (ii.) of that Act.

lessees on account thereof during the last preceding year, so that the affairs of the said mining concern, and the balance of profits and losses of the lessees made and contained in such preceding year may from time to time plainly appear; and, on demand, deliver the same unto the lessor or his steward or agent for the time being; AND will, from time to time and at all times during the said term, and at any time after the expiration or sooner determination thereof, while any of the covenants herein on the lessees' part contained shall remain unperformed, give to the lessor or his steward or agent for the time being, within twenty-one days after notice in writing in that behalf shall have been given in manner hereinafter provided, a true and perfect list in writing, under the hand or hands of the lessees, or of such purser as aforesaid, of all such persons as shall have been adventurers therein during any period or periods of the time between the commencement of the said term or the date of any previous like notice, as the case may be, and the day of the date of such current notice, which shall be specified therein, together with the then or last known places of abode and additions of such adventurers; AND ALSO the shares and interests held by them respectively in the said mines, during the same period or periods of time, as far as the lessees may be enabled by the cost books or account books of the said mines, or otherwise, to set forth the same; AND ALSO will not, at any time or times during the said term, work or dig, or cause to be worked or dug, any ground beyond the limits aforesaid; AND will not, at any time or times during the said term, in the exercise of all or any of the liberties, licences, or powers hereby granted, do or commit any waste, damage, or injury to any messuage, tenement, house, or other erection or building, or any garden now existing, or do, or cause to be done, any act, matter, or thing whatsoever which may in anywise tend to the detriment, injury, or prejudice of the owner, tenant, or occupier of such messuage, tenement, house, erection, building, or garden.

to deliver account of all adventurers and their respective interests:

not to work beyond limits of demise;

not to commit waste, &c.

3. The lessor hereby covenants with the lessees that they, rendering and paying, laying out and delivering the said several and respective dues and royalties, and dishes, or the money so to be paid in lieu thereof as aforesaid, and observing and performing the several covenants, conditions, and agreements hereinbefore contained, and on the part of the lessees to be observed

Covenant by lessor for quiet enjoyment.

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and performed, shall (subject and without prejudice to the several exceptions, reservations, provisoes, and agreements in favour or for the benefit of the lessor hereinbefore contained), peaceably and quietly have, hold, possess, and enjoy the powers and privileges hereby granted, and every of them, for and during the said term, without any interruption or disturbance from or by the lessor, or any person or persons lawfully claiming under or in trust for him.

Proviso for lessor to revoke licence and re-enter on non-render of royalties, &c., or on breach of covenant.

4. It is hereby agreed and declared, that if the parts or shares hereby reserved of the metals, ores, and metallic minerals which shall be found within the limits aforesaid, or any part thereof respectively, or such sum or sums of money (if any) as shall from time to time be payable in respect of the same, or any part thereof respectively, shall be undelivered, behind, or unpaid by the space of twenty-one days next after any one of the several days whereon the same ought to have been delivered and paid as aforesaid, whether payment thereof respectively shall have been formally or legally demanded or not; or in case of breach or non-performance of all or any of the covenants, provisoes, and agreements hereinbefore contained: then and thenceforth for all or any of the causes aforesaid, and at any time thereafter, it shall be lawful for the lessor, by notice in writing to be given to the lessees in manner hereinafter provided, to revoke and determine the several liberties, licences, and powers hereby granted; And immediately after any such notice shall have been so given, the liberties, licences, and powers hereby granted, and every article, clause, matter, and thing herein contained, shall absolutely cease and determine (*j*), save and except so far as concerns and for the purpose of enforcing any right of action which shall have accrued to either of the said parties hereto, by reason of the breach of any of the covenants and agreements herein contained.

Power to lessors to purchase

5. It is hereby agreed that if at the determination of the said term the lessor shall desire to purchase all or any of the fixtures,

(*j*) The notice must be peremptory. Where there was a proviso somewhat similar to the above, a notice, that, unless the grantees did thenceforth keep six miners constantly at work, &c., the grantors would, at the end of a month, re-enter, was held not to be a sufficient notice to determine the licence, although the grantees did not observe the requisitions of the notice: *Muskett* v. *Hill*, 5 Bing. N. C. 694.

machinery, engines, plant, or other articles and things used or employed in or about mines or works hereby demised, and shall by a notice in writing given to the lessees in manner hereinafter provided, one calendar month before the determination of the said term, or, if determined under the power of re-entry hereinbefore contained, at any time within fourteen days after such determination, then the articles specified in such notice shall not be removed by the lessees, but shall be purchased by the lessor at a price to be determined, in case of dispute, by arbitration in manner hereinafter provided. And in default of and subject to any such notice by the lessor as last aforesaid, then upon the determination of the said term, when and so soon as the shafts opened by the lessees shall have been properly filled in or covered or secured, and all royalties, dues, and compensation shall have been paid according to the covenants hereinbefore contained, then, but not before, the lessees shall be at liberty to remove the said fixtures, machinery, engines, plant, and other articles.

machinery and plant, &c. at the end of the term.

6. It is hereby agreed that all notices hereby required or authorised to be given shall be in writing, and shall be signed by the lessor or the lessees, as the case may be, or by their respective agent or solicitor for the time being: And any notice hereby required or authorised to be given to the lessor shall be deemed to be duly and sufficiently given if delivered to the lessor personally, or if left for him at his last known place of abode in the United Kingdom, or if delivered to his agent or any of his agents for the time being, or to such other person and in such manner as the lessor shall from time to time in writing direct: And any notice hereby required or authorised to be given to the lessees, shall be deemed to be duly given if given to the lessees, or any of them, either personally, or if left for them, or any of them, at their or

Proviso as to notices (*k*).

(*k*) The following may be substituted for the proviso in the text:—

"It is hereby agreed that any notice hereby required or authorised to be given to the lessor or lessees respectively shall be in writing, and may be given or served in any of the modes provided by sect. 67 of the Conveyancing Act, 1881, with respect to notices to be given to lessors or lessees (as the case may be) under that Act, but not so as to abridge any of the rights or powers hereinbefore given to the lessor or his agent."

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his last known places or place of abode in the United Kingdom, or if given or left for the purser, manager, or principal captain for the time being of the said mines either personally, or at his dwelling-house, or at the office or counting-house of the said mines.

Proviso for arbitration of disputes as to the working of the mines or the construction of the deed.

7. In case any differences or dispute shall arise during the continuance of these presents as to whether the said lode or mine now being worked within the limits aforesaid, or any other lodes or mines hereafter to be discovered within the said limits, or any of them, have been or are being properly and effectually worked, or as to the price to be paid for any articles purchased under clause 5 hereof, or as to any other valuation or estimate to be made in pursuance of these presents, or otherwise, or with reference to the construction and meaning of these presents, or any of the covenants, provisoes, and agreements herein contained, the same shall be referred to the arbitration of two indifferent persons, one to be appointed by each party, and these presents shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment of the same for the time being in force.

IN WITNESS, &c.

XX. LEASE *of* COAL MINES *to a* COMPANY *by a* TENANT *for* LIFE *under the Settled Land Acts* (*l*).

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c., of the first part; [*trustee*],

Powers of a tenant for life under S. L. Acts.

(*l*) By the S. L. Act, 1882, a tenant for life is empowered to grant mining leases for sixty years, sect. 6 (ii.), by deed, to take effect in possession within twelve months, sect. 7 (1), subject to the requirements by the Act as to reservation of rent, sect. 7 (2), as to the lease containing a covenant for payment of rent and a condition for re-entry, sect. 7 (3), execution of counterpart, sect. 7 (4); and as to mining rents, sect. 9. The Court can authorise a longer term than sixty years in certain cases: sect. 10. By sect. 11, where the tenant for life is impeachable for waste in respect of minerals, three-fourths of the rent, otherwise one-fourth, must be set aside as capital money (but see as to leases granted under a power in a settlement prior to the Act, *Lonsdale* v. *Lowther*, [1900] 2 Ch. 687). Sect. 17 provides for a sale of mines and minerals or a mining lease with or without a grant or reservation of powers of working, wayleaves, and other easements: see definition of mines and minerals, sect. 2 (10) (iv.); and see S. L. A. 1890, s. 5. In the case of open mines only one-fourth of

Stamp.

(*m*) Stamp, *ad valorem* on *minimum* rent: see *ante*, p. 507.

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of, &c., and [*trustee*], of, &c., of the second part; and the —— Coal Company, Limited, of the third part: WHEREAS, by an indenture of settlement, dated, &c., and made between [*parties*], certain freehold lands and hereditaments situate in the several parishes of —— and ——, in the county of ——, and shown on the plan hereunto annexed and therein coloured pink, in or under which lands the mines and hereditaments hereinafter mentioned and intended to be hereby demised are situate and lying, were, with other hereditaments, limited to the uses therein mentioned, whereby the said [*tenant for life*] is now tenant for life in possession of the same without impeachment of waste, and by the indenture now in recital the said trustees were appointed trustees thereof for the purposes of the Settled Land Acts. NOW THIS INDENTURE WITNESSETH, and it is hereby agreed and declared, as follows:— *Testatum.*

1. In these presents (unless the contrary appears) the expression "the lessor" includes the said [*tenant for life*] and other the person or persons for the time being entitled to the reversion of the hereditaments and premises intended to be hereby demised expectant on the determination of the term hereby granted: The expression "the trustees" includes the said [*trustees*] and other the trustees for the time being, for the purposes of the Settled Land Acts, of the said indenture of settlement: the expression "the company" includes the said [*lessee*] and their successors and assigns: and the expression "the premises," unless otherwise restricted, includes the whole of the mines and hereditaments intended to be hereby demised. Interpretation clause.

2. In consideration of the rents and royalties hereby reserved, and of the covenants and conditions hereinafter contained, and on the part of the company to be observed and performed, the lessor, in exercise of the power in this behalf given to him as such tenant for life as aforesaid by the Settled Land Acts, 1882 to 1890, and of any other power whatsoever, him hereunto enabling, Demise.

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the profits must be set aside: *Re Chaytor*, [1900] 2 Ch. 804. A power to lease "lands" does not empower the donee to lease unopened mines, and a direction in a will to pay rents of unopened mines to a tenant for life is not an expression of "a contrary intention" within sect. 11 of the S. L. A. 1882: *Re Daniels*, [1912] 2 Ch. 90. As to coal mines, see Coal Mines Act, 1911, by which the previous law was consolidated. As to mineral rights duty and increment value duty, see *ante*, p. 587, note (*a*).

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Parcels (*n*).

demises unto the company ALL AND EVERY the mines, beds, and veins of coal and cannel already opened and found, or which hereafter shall be found or discovered (*o*) in or under any part or parts of the said lands coloured pink on the said plan, To HOLD the premises, together with the several liberties and powers hereinafter granted, unto the company from the —— day of ——, 19—, for the term of sixty years next ensuing.

Habendum.

Liberties, powers, and privileges to work mines;

3. For the consideration aforesaid, the lessor grants unto the company full and free liberty for the company, by themselves, their servants, agents, or workmen, from time to time, during the said term to enter upon such parts of the surface of the said lands as are edged round with dark red on the said plan, but not upon any other part thereof without the lessor's written consent, and (subject to and not so as to extend such limited right of entry as aforesaid) to do all or any of the acts and things following, that is to say: To search for, win, work, get, raise, convert, make merchantable, and carry away, sell, and dispose of the coal and cannel in and under every part of the lands aforesaid at their will and pleasure, and receive for their own use all profits arising from such sales: AND ALSO from time to time to sink, drive, make, or construct any pits (*p*) and shafts, engine or other planes, levels, adits, soughs, tunnels, drains, airways, and watercourses within any part or parts of the land aforesaid: AND ALSO to erect and make, and from time to time, as exigencies may require, to pull down, and remove any engines, gins, whimseys, wheels, or other machines, coke ovens, workshops, tramroads, railroads and other roads, and communications and other proper and convenient works whatsoever, in or upon the lands aforesaid, for the draining, unwatering, or laying dry, and for working and carrying on, the collieries, and for the use of such engines, machines, and necessary works to collect and divert all streams of water flowing, running, or arising within the lands aforesaid, and for the like

to sink pits, &c.;

to erect engines;

(*n*) If a particular seam of coal is demised, say,
"All that mine, bed or seam of coal known as the —— seam lying and being in, or under, any part or parts of the said settled lands," &c.

(*o*) See S. L. Act, 1882, s. 11.

(*p*) The right to sink pits was held to give a lessee an interest in the land in respect of which he could claim compensation against a railway under sect. 68 of the Lands Clauses Consolidation Act, 1845: *Re Masters and G. W. Rail. Co.*, [1901] 2 K. B. 84.

purpose to make reservoirs to hold the waste water; AND ALSO to make any roads or ways, navigable cuts, trenches, tunnels, docks, wharves, and places and conveniences on the lands aforesaid, for the banking, stacking, conveying, and carrying away, such coals and cannel: AND ALSO, for the accommodation of colliers and workmen, to erect and build cottages and dwelling-houses upon such parts of the said lands as shall from time to time be appointed by the lessor, or his agent for the time being; and, without any such appointment, to erect and build any cottages or dwelling-houses contiguous to any fire engine, or at the mouth of any navigable tunnel, or adjoining to any wharf or coal yard, that may be made at the mouth of any such tunnel, for the habitation of a person or persons necessarily attendant on such fire engine, or at such tunnel, wharf, or coal yard: AND ALSO to deposit upon a convenient part of the said lands, to be approved by the lessor or the agent for the time being acting in the management of the —— estate, all coal, cannel, and slack gotten from the said mines, and all rubbish, earth, and spoil brought to the surface therewith, and all materials used in working the said mines: AND ALSO to get stone, sand, and gravel for making roads, and clay or loam for making bricks, in some convenient place or places, within or upon the lands aforesaid, to be used only in or about the colliery or coal and cannel works, and for such cottages and dwelling-houses as aforesaid, and not for any other use or purpose whatsoever; such stone, sand, gravel, clay, and loam to be gotten in such places or parts of the said lands as shall, from time to time, be appointed for that purpose by the said lessor, or the agent for the time being acting in the management of the —— estate, and not elsewhere, upon previous application made by the company to the lessor or such agent as aforesaid; AND if, after application made for the several purposes aforesaid, the lessor or such agent as aforesaid, for the time being acting in the management of the —— estate, shall refuse or neglect to make such appointment for the purposes aforesaid, for the space of twenty-one days, then and in such case it shall be lawful for the company or their agents to erect such cottages and buildings, and to get such stone, sand, gravel, clay, or loam for the purposes last aforesaid, in some convenient place or places which they shall fix upon, on giving one month's notice in writing for that purpose to the lessor, or such agent as aforesaid, of such their intention, and of the place where they intend to erect such cottages

to make roads;

to erect cottages;

to deposit minerals, rubbish, and materials;

to get stone and make bricks;

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and buildings, or to get such stone, sand, or gravel respectively, as aforesaid, unless within one month from the personal service of such notice the lessor, or such agent as aforesaid, shall make such appointment as aforesaid for the purpose or purposes required: And also full liberty of ingress, egress, and regress to and for the company, and their agents, servants, workmen, and customers, on foot or with horses and other animals, carts, waggons and carriages, and machines of every description, in, over, and through any part or parts of the said lands, for the getting, loading, taking, conveying, and carrying away the coals and cannel from the mines hereby demised, or for bringing and laying down materials for sinking pits or making roads, or doing any other works for the more effectual getting and carrying away the coals or cannel, or doing any other proper and convenient and necessary works for carrying on the colliery: [And also full liberty for the company to work the mines and minerals hereby demised by instroke from any adjoining mines belonging to or held by them, and to work any such adjoining mines by instroke through the mines hereby demised]: And also, at the end or sooner determination of the said term, to remove and dispose of the rails and sleepers of any railed ways, and such engines, wheels, tools, and utensils as are or shall be erected, made, and brought upon the said lands, for the working and getting the mines, or which shall have been used in or about the same, unless the lessor shall be desirous of purchasing the same or any part thereof, and of such desire shall give not less than —— days' notice before the expiration or sooner determination of the term; in which case it shall be lawful for the lessor to take all or such of the said rails and sleepers, engines, wheels, tools, and utensils as he shall so desire to purchase as aforesaid, on paying to the company such a fair valuation for the same as such railed roads, engines, wheels, tools, and utensils may be worth to carry off, such valuation to be ascertained by arbitration in manner hereinafter mentioned.

to do other necessary acts;

to remove machinery at end of term.

Reddendum.

4. The company shall pay for the premises hereby demised and granted respectively, during the said term, on the - — day of —— and the —— day of —— in every year, the rents and royalties hereinafter mentioned, that is to say: In respect of the mines hereby demised, a rent after the rate of £—— for every acre that shall be gotten and raised thereout of the thickness of one foot, including, measuring, and reckoning therein and therewith all pillars, walls, and ranges which the company may think proper

Footage rent.

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to leave to support the roof of the mines hereby demised, and so in proportion for a greater or less quantity in thickness than a foot of each and every acre which the company shall yearly get within the lands aforesaid: And in case in any half-year during the said term, the company shall not get and raise such a quantity of coal and cannel out of the mines hereby demised, as, according to the said footage rent, shall produce a clear minimum rent of £——, then such a sum as, together with the footage rent payable in respect of coal and cannel actually gotten and raised during such half-year, shall amount to the clear minimum rent of £—— : And in respect of the right of outstroke from other mines, a royalty after the rate of —— per ton of twenty hundredweight for all coal, cannel, stone, or other minerals brought to surface during the preceding half-year from any mine or mines other than the mines hereby demised, through the pits whether existing or hereafter to be sunk during the said term, in any part of the said lands, every payment of such royalty to be made on the rent day next ensuing after the said right of outstroke shall have been exercised: Provided always, that no pillars, walls, or ranges that may be left for the support of the roof, nor any fault or bristle, shall be deemed to be any defect in regard to the measurement of the mines hereby demised, or any deficiency in the same, unless any such fault or bristle shall exceed one-fourth part of an acre: And that in all cases where any such fault or bristle shall happen and be discovered, immediate notice thereof in writing shall be given to the lessor, his or their agent or agents, in order that the same may be fairly tried, measured, or ascertained: And that no rent shall be paid for any fault which shall exceed one-fourth part of an acre as aforesaid: Provided always that if and whenever the company shall for any half-year have paid the minimum rent of £—— without having actually gotten in such half-year such a quantity of coal and cannel out of the mines hereby demised, as, according to the said footage rent, would have produced a clear minimum rent of £——, and the company shall in any subsequent half-year or half-years get such a quantity of coal and cannel out of the same mines, as, according to the footage rent aforesaid, would produce a half-yearly rent exceeding £ ——, the company shall not be liable to pay any rent (other than the minimum half-yearly rent of £——) for such quantity of coal and cannel gotten and raised out of the mines hereby demised, as shall be required to make up the deficiency, but no excess of

Minimum rent.

Royalty for outstroke from mines under other land.

Pillars, faults, &c. to be measured in, except faults, &c. exceeding a quarter of an acre.

Average clause.

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footage rent paid for any preceding half-year shall be allowed to make good the deficiency in any subsequent half-year.

Mode of payment of rents.

5. The several rents and royalties hereinbefore reserved shall, until the company shall receive from the trustees notice in writing to the contrary, be paid in the proportions and in manner following, that is to say: three-fourths of the said rents and royalties shall be paid to the lessor, and the remaining one-fourth thereof to the trustees, to be set aside by them as capital money arising under the Settled Land Acts, 1882 to 1890. And the company hereby covenant with the lessor, and also with the trustees, that they the company will pay the said several rents and royalties hereinbefore reserved, on the days and in the proportions and manner hereinbefore mentioned.

Covenant by lessees to pay rents.

Lessees' covenants:

And the company hereby covenant with the lessor as follows:—

to pay taxes, &c.;

6. The company will, during the said term, also pay all leys, taxes, rates, charges, assessments, and impositions, which are now or shall at any time hereafter be charged or imposed upon, or in respect of the mines and premises hereby demised, or the rents or royalties hereby reserved, or any part thereof respectively, the landlord's property tax and increment value duty and mineral rights duty only excepted (*pp*), and from time to time keep freed and discharged the lessor, and his estates, lands, hereditaments, goods and chattels, of and from the same and every part thereof, and from the payment thereof or of any part thereof.

to deliver up the mines, &c. at the end of the term;

7. The company will, at the expiration or other sooner determination of the said term, peaceably yield, deliver up and surrender the mines and premises hereby demised, and all and every the cottages, dwelling-houses and buildings now erected or which shall hereafter be erected and built by the company or their agents on the said lands, with the appurtenances, unto the lessor.

to work the mines properly;

8. The company will forthwith proceed to work and prosecute the colliery and mines, and they, and each of their agents, servants, and workmen will, during the said term, in the working of all or any of the mines hereby demised, observe and keep good and true levels, and get the same mines respectively clean and fairly before them, and in all things work the same in a fair, honest, and good workmanlike manner, and as other works of the like nature are usually or ought to be worked, and with as little damage as may be to the surface of the lands aforesaid: AND

(*pp*) See *ante*, p. 587, note (*a*).

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also will leave substantial and sufficient walls, ranges, and pillars, as often as and where proper and necessary to be left, supporting the roof and roofs of such mines, levels, and airways, as shall be necessary from time to time to be made in the said mines, for the getting and carrying on the same.

to deliver measurements;

9. The company will, four times in every year during the said term, if they shall be hereunto required, within twenty days from the time of any such request in writing by the lessor, or his agent or agents, leave for him or them at —— a true, just, and exact measurement of the quantity of each bed or mine, and the thickness thereof, which shall have been gotten since the last measurement delivered in, particularizing also the place or places where the same shall have been gotten, such account to be from time to time signed by the manager or principal agent of the company.

to permit the lessor to descend into the mines to view;

10. It shall be lawful for the lessor, or his agent or agents to be appointed for that purpose, and the company will permit him or them, as often as he or they or any of them shall think fit, from time to time during the said term, to descend any pits or shafts into the mines hereby demised, to view and see that the same are fairly, duly, and properly worked, according to the covenants and agreements herein contained, and to inspect, measure, and dial the same, so as to ascertain the real and actual quantity of coal or cannel gotten, or which may remain to be gotten by virtue of this demise, and to return back in like manner; and the company shall give and afford them or any of them all reasonable aid and assistance for the purposes aforesaid.

to weigh coal, &c. raised by outstroke from adjoining mines.

11. The company will set up at some convenient place or places, to be approved of by the lessor or the agent for the time being acting in the management of the —— estate, upon the said lands one or more good and properly constructed weighing machines, and will weigh or cause to be weighed therein all coal, cannel, and other minerals brought to the surface from time to time during the said term from any other mine or mines other than the mines hereby demised through the pits whether existing or hereafter to be sunk during the said term in any part of the said lands; And will cause the weights ascertained as aforesaid to be duly registered at the machine house or houses; And will at the end of each day, when the weights shall have been ascertained as aforesaid, cause the total weights and quantities of the coal, cannel, and other minerals so weighed as aforesaid to be entered in proper books of account to be kept for the purpose; And will

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give not less than —— days' notice to the lessor of the time of every such weighing; And will permit the lessor to employ any person or persons to be present on his behalf at such weighing; and to keep an account thereof, and to check the accounts so to be kept by the company and entered as aforesaid.

to fence off pits, &c.;

12. The company will, at their own costs and charges, fence off, and keep effectually fenced off such parts of the said lands as shall from time to time during the said term be used for pits, ways, or roads, navigable cuts, tunnels, trenches, wharfs, or bank room, or otherwise, in or about the working of the mines hereby demised, from other the adjoining lands of the lessor, and also fence the eyes of pits, and will hang and keep in repair sufficient and convenient gates in such fences, for the necessary and convenient occupation of such lands, and for the passing and re-passing of the lessor and his lessees, tenants, and the agents, servants, and workmen of him, them, or any of them, on horseback or on foot, or with cattle, carts, or carriages, to and from such lands for all purposes whatsoever.

to pay compensation for damages;

13. The company will pay to the lessor or his lessees or tenants, as the case may be, on the —— day of —— in every year during the said term full compensation for all damage that shall be sustained by breach, waste, or spoil of ground or otherwise to be occasioned by the sinking of pits, driving or making of soughs or drains, banking of coal, cannel, or slack, heap room or wharf room, or by making or using any ways, roads, watercourses, ditches, cuts, trenches, or sluices, or getting stone, digging clay, or making bricks, or otherwise in the prosecuting and carrying on the intended works, or the taking or using of all or any of the liberties or privileges hereinbefore granted in, upon, or through any part of the said lands, such compensation (if not agreed upon between the parties interested) to be ascertained by arbitration, as hereinafter mentioned.

to fill up disused pits, &c.;

14. The company will, at their own proper costs and charges, with all convenient speed, when and as often as any pit or road shall be disused, well and effectually fill up and level the same, and carry away and dispose of the slack, stone, and rubbish which shall remain round any such pit or upon any such road after filling up and levelling the same, and at the expiration or other sooner determination of the said term, will clear the said lands, and every part thereof, from the stone, rubbish, and slack that shall arise or be occasioned by the digging or working of the said

mines hereby demised, or by banking or laying coals or cannel thereon, or by roads made or used, or by any other works that shall be made or carried on for any of the purposes hereinbefore mentioned; AND will in a workmanlike manner level the brows, crops, ways, roads, ditches, fences, holes, and other places that shall be made for any of the purposes aforesaid, and ditch up the old fences, and set with quick-wood all such gaps as shall be made in any of the old fences, and will fill up and level all such eyes, pits, shafts, reservoirs, and holes, as shall then remain in the said lands, or any part thereof: PROVIDED ALWAYS, that if the lessor shall desire to have any such ways, roads, pits, or fences preserved and kept open, and shall give reasonable notice thereof to the company, in that case such ways, roads (with the liberty nevertheless for the company, subject to the condition hereinbefore mentioned, to remove the rails and sleepers of any railed ways), pits, or fences, touching which such notice shall be so given, shall thereupon remain and be left open accordingly in the same condition as such ways (not being railed ways), roads, pits, or fences shall happen to be at the time of such notice given, and thereupon and from thenceforth the company shall be discharged from filling up, fencing about, levelling, or taking any further care thereof, and from all damages that may thereafter happen therefrom: PROVIDED ALSO that the company shall not, in cleansing the lands aforesaid from the slack, stone, and rubbish in manner aforesaid, be obliged to carry the same from off such lands entirely; but may lay and bestow the same in some convenient place or places, to be appointed by the lessor or his agent or agents for that purpose, such places not to be more than — yards distant from the pits, roads, or places, from which such slack, stone, or rubbish shall be to be removed; the best soil shall be laid uppermost, and the whole levelled in a workmanlike manner, so as to render the same at least equal in quality and value to the adjoining lands, the company paying to the lessor, or his lessees or tenants respectively, compensation for the damage done to his or their lands in or about the filling up and levelling the works aforesaid, such compensation (if not agreed upon between the parties interested) to be settled by arbitration as hereinafter mentioned.

unless lessor otherwise directs.

Lessees may bestow rubbish in places appointed by lessor.

15. The company will permit the lessor, from time to time during the said term, to inspect and make extracts from and

To permit lessor to inspect plans.

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copies of all such plans, remarks, and accounts of borings, as the company shall make or cause to be made, or which they shall be in, or can obtain possession of, in anywise touching or concerning the mines hereby demised, or the nature, situation, and circumstances thereof.

Lessor's covenant for quiet enjoyment.

And the lessor hereby covenants with the company as follows:—

16. The company rendering the accounts aforesaid, paying the rents, duties, and sums of money hereinbefore reserved and made payable, and observing and performing the covenants, conditions, and agreements hereinbefore contained, and on their part to be observed and performed, shall and may peaceably and quietly hold and enjoy the colliery, and coal and cannel mines and premises hereby demised, with all and every the liberties and privileges hereinbefore granted for and during the said term, without interruption or disturbance from or by the lessor, or any person or persons claiming by, from, or under him, or under the said indenture of settlement.

Power of distress.

17. When and so often as default shall be made in the payment of the rents, royalties, and sums of money herein reserved, or any of them, or any part thereof respectively, by the space of twenty days next after any of the days hereinbefore appointed for payment thereof respectively, it shall be lawful for the lessor to enter into and upon the said lands, or any part thereof, and to take, seize, and distrain at any of the pits or pits' eyes of or belonging to the colliery or coal or cannel works, or the brows or banks, or at, or within any of the tunnels or trenches intended to be made as herein mentioned, or at any wharf, dock, or place, all or any part of the coals or cannel that shall be gotten, or any of the engines, whimseys, boats, vessels, machines, wheels, gears, horses, tools, instruments, utensils, goods, chattels, and effects whatsoever, which shall or may be found upon or within the said lands, or any part thereof, or belonging to the colliery or coal and cannel works, or to the company, and to sell and dispose of such distress and distresses until the rent, royalty, or sum of money, which shall so happen to be in arrear as aforesaid, together with all costs, charges, and expenses attending such distress and sale, shall be fully paid and satisfied.

Proviso for re-entry.

18. When and so often as any such default shall be made in payment of the said rents, royalties, and sums of money as afore-

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said, or if and so often as there shall be a breach of any of the covenants or agreements by the lessees herein contained, or if and so often as the company shall commit any voluntary waste in or upon the lands aforesaid, or any part thereof, otherwise than in proper exercise of the liberties hereinbefore granted, or shall enter into, make, or execute any composition with, or assignment for the benefit of their creditors, or shall enter into liquidation, whether compulsory or voluntary (otherwise than for the purpose of reconstruction), then, and in any such case, it shall be lawful for the lessor, into all and singular the demised mines and premises, now or hereafter during the said term to be opened, or into any of them in the name of the whole, to re-enter, and the same and every part thereof to recover, re-possess, and enjoy, as of his former estate, as if these presents had never been made.

Proviso as to notices.

19. All notices hereby required, or authorised to be given, shall be in writing: And any notice hereby authorised or required to be given to the lessor shall be deemed to be duly and sufficiently given if personally delivered to the lessor, or if left for him at his last known place of abode in the United Kingdom, or if delivered to the agent for the time being, acting in the management of the —— estate, or to such other person, and in such manner as the lessor shall from time to time in writing direct: And any notice hereby authorised or required to be given to the company shall be deemed to be duly and sufficiently given and delivered, if given personally to the secretary for the time being of the company, or left for him at the registered offices for the time being of the company, or if given to or left for the purser, manager, or principal captain of the said mines, either personally, or at his or their respective dwelling-house or dwelling-houses, or at the office or counting-house of the said mines.

Arbitration clause.

20. If any question, dispute, or difference shall arise concerning the said mines hereby demised, or the working thereof, or concerning the construction and meaning of these presents or any of the covenants, provisoes, or agreements herein contained, or the rights or liabilities of the parties hereto respectively hereunder, then such question, dispute, or difference shall be referred to the determination and award of two arbitrators, one to be appointed by the lessor and the other by the lessees, or, in case of their disagreement, then to the determination and award of an umpire to be chosen by the said arbitrators before entering upon the

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reference: And the award of the said arbitrators or of their umpire, as the case may be, shall be final to determine such question, dispute, or difference, and also to determine by whom the costs of the arbitration and award shall be borne: And this shall be deemed to be a submission to arbitration, within the Arbitration Act, 1889, or any statutory enactment for the time being in force with regard to arbitrations.

In witness, &c.

XXI. LEASE *of* Limestone Quarries *and* Works.

THIS INDENTURE (*q*), made the —— day of ——, 19—, Between [*lessor*], of, &c., of the one part, and [*lessee*], of, &c., of the other part. WITNESSETH as follows:—

Parties.

Testatum.

Interpretation clause.

1. In the construction of these presents (where the context so admits), the expression "lessor" shall include the said [*lessor*], his heirs and assigns, and the expression "lessee" shall include the said [*lessee*], his executors, administrators, and assigns, and the expression "the premises" shall include the quarries, liberties, licences, privileges, and hereditaments hereinafter described and hereby demised.

Demise of quarries and works.

2. In consideration of the rents, renders, reservations, and payments hereby reserved, and of the covenants, conditions, and agreements herein contained, and on the part of the lessee to be paid, observed, and performed respectively, the lessor hereby demises unto the lessee, All the quarries, delph-pits, and beds of limestone, spar, and other minerals of all kinds whatsoever, which now are, or during the term hereby granted shall or may be, open or discovered upon or underneath all or any of such lands of the lessor, situate at ——, in the county of ——, as are delineated in the map or plan hereunto annexed, together with the several liberties, licences, and privileges, but subject to the several exceptions and reservations hereinafter mentioned respectively, To hold the premises (except as herein is excepted and reserved) unto the lessee from the —— day of ——, 19—, for the term of —— years thence next ensuing, at and subject to the several rents, renders, payments, covenants, conditions, and agreements hereinafter reserved and contained respectively.

Habendum.

Grant of

3. For the consideration aforesaid, the lessor grants full liberty

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Stamp.

(*q*) Stamp, *ad valorem* on fixed yearly rent: see *ante*, p. 507.

and licence unto the lessee and his agents, workmen, labourers, and servants during the said term to open, dig, search for, work and get all such limestone, spar, and other minerals in or upon the premises, or any part thereof, and to erect, build, and set up, in or upon the same, such buildings (except dwelling-houses other than for workmen, labourers, and servants employed thereon, and those to be erected only on such sites or places as shall be approved in writing by the lessor or his agent), kilns, engines, and machinery, and to do all such things as shall be found necessary or expedient for the better and more effectually getting and raising such limestone, spar, and other minerals, and the working and carrying on of the premises, and the business and matters connected therewith, and for the burning, converting, and making such limestone into lime; AND ALSO to lay, place, and stack the said limestone, spar, and other minerals, and all such earth, clay, stones, and rubbish as shall be gotten, collected, or thrown up in the working of the premises, or any part thereof, and the business connected therewith, upon or as near to the premises as conveniently as may be, and as is usually done or practised in the like cases; AND to convert to and for his proper use and benefit, all such limestone, spar, and other minerals and lime as shall or may be gotten, raised or made, as aforesaid, from the premises or any part thereof.

licence to work quarries.

4. For the consideration aforesaid, the lessor also grants liberty and licence unto the lessee and his agents, workmen, labourers, and servants, to make such and so many waggon roads, tramways, railways, and approaches to the premises (and particularly a railway from the premises, through and over the lands of the lessor to join a railway now in course of construction over lands belonging to the lessor, and over other lands belonging to Sir [A. B.], and by means thereof to communicate with the —— Railway, at or near ——), and to do all other reasonable acts and things necessary or proper for the carrying away of the said limestone, spar, and other minerals and lime as shall from time to time be necessary or expedient; AND ALSO full liberty of ingress and egress in, to, out of, and from the premises, or any part thereof, with horses, carts, and waggons, and other carriages, or otherwise, as shall be necessary for conveying, carrying away, selling, and disposing of the said limestone, spar, and other minerals and lime, in, by, or along all such roads and ways, or any of them or any part thereof; AND ALSO to make and construct one or more wharf or wharves

Grant of licence to make roads, &c.

Right of way.

Licence to make a wharf.

XXI. LEASE OF LIMESTONE QUARRIES AND WORKS.

for the deposit of coals and other things, with the privilege of carrying and conveying the same coals over and along all such roads or ways, and to and from such wharf or wharves, or such and so many of the said liberties, powers, and privileges respectively, as the lessor can or ought to grant and demise, but not further or otherwise; AND ALSO (as far as the lessor is entitled thereto, and can or may lawfully demise the same, but not further or otherwise) the use of a certain sough or level, called the —— level, for the better enabling the lessee to get and raise the said limestone, spar, and other minerals and lime, together with all rights, members, and appurtenances to the said quarries and works hereby demised, or any of them belonging, or in anywise appertaining.

Exception and reservation to lessor of right of entry.

5. Out of the present demise is excepted and reserved to the lessor and his servants, and tenants, and other persons authorised by him, full and free liberty and licence of passing and repassing at all reasonable times through, across, and along the roads, ways, and premises hereby demised, or any of them (except with horses, cattle, carts, or carriages along the line or lines of any such railway or railways as aforesaid), without let or disturbance of the lessee; AND ALSO full and free liberty to, and licence for, the lessor, his agents or workmen to enter into and upon all or any part of the said quarries, works, and premises hereby demised at all reasonable times in the daytime to inspect the then state and condition thereof as is hereinafter provided.

***Reddendum* of rents and royalties.**

6. The lessee shall pay, during the said term, for the premises the clear yearly rent of 125*l.*, and the further rent or sum of 3*d.* for every ton of limestone, spar, or other minerals (except lead-ore), over and above the quantity of 10,000 tons, that shall be gotten or raised from the premises and sold or removed therefrom, or converted into lime, or otherwise converted or manufactured for sale on the premises, in every year of the said term, by virtue of this present demise; AND ALSO, the further rent of £—— for every acre, and so in proportion of every less quantity than an acre of the lands of the lessor, which shall or may be taken or used by the lessee at any time or times during the said term for any of the purposes or in the exercise of any of the powers or privileges hereinbefore contained (except the land actually destroyed and made waste by getting and taking the limestone therefrom by virtue of these presents), the said last mentioned

rent, and also the said several rents or sums of 125*l.* per annum, and of 3*d.* per ton for limestone and other minerals (except lead-ore), over and above the quantity aforesaid, to be respectively payable half-yearly during the said term, on the —— day of ——, and the —— day of ——, in every year, clear of all deductions whatsoever (except land tax and landlord's property tax), the first payments of such rents respectively to be made on the —— day of ——, 19—.

Reddendum of one-sixth of lead-ore.

7. The lessee shall also yield and render to the lessor for his own use and benefit one full and clear sixth part or share of all the lead-ore which may be found, dug, raised, or gotten, from, and out of the said lands, or any mines, veins, pipes, or flats therein, or in any part or parts thereof, by virtue of this present demise, after the same shall have been made merchantable and fit for smelting and refining free and clear of and from all charges and expenses attending the raising, getting, and making the same merchantable, and all other deductions whatsoever, when and as often as the same lead-ore shall be weighed and measured by the agent or other person or persons who shall be authorised by the lessor to weigh and measure the same and before any part of the said lead-ore shall be removed from the mines or places where the same shall from time to time be respectively raised or gotten.

Lessee's covenants:

And the lessee hereby covenants with the lessor in manner following, that is to say:—

to pay and render rents and royalties;

8. The lessee will duly yield, pay, and render the said several rents, sums, and royalties hereby reserved respectively, at the times and in manner hereinbefore appointed with respect to the same respectively; And will also from time to time, and at all times during the said term, pay all the taxes, rates, levies, assessments, and impositions whatsoever charged, assessed, or imposed upon the premises, or upon the said several rents and royalties, or upon any erections, buildings, or works to be erected and built or carried on in pursuance of these presents, or upon the lessor or lessee in respect thereof, the landlord's property tax, land tax, and increment value duty and mineral rights duty only excepted.

and taxes, &c.;

except land-tax;

to keep books of account;

9. The lessee will keep true and accurate books of account of all the limestone and other minerals (except lead-ore), and lime which shall be gotten, sold, and removed from the premises or converted, or manufactured thereon as aforesaid, wherein he will from time to time enter the quantity or quantities of the said

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limestone and other minerals (except lead-ore), and lime, sold, or removed, or converted, or manufactured as aforesaid; And will at the end of every three calendar months during the said term make out and deliver to the lessor or his agent or agents a fair and correct abstract of the said books of account for the then last preceding three calendar months, and by himself or his agent or agents verify the same upon oath if required; And also permit the lessor and his agent or agents at all reasonable times to inspect the said books of account, and to take copies thereof or extracts therefrom.

to repair;

10. The lessee will during the said term, at his own costs and charges, well and effectually repair, preserve, and maintain all and singular the dwelling-houses, buildings, sheds, roads, ways, and passages which are or in consequence of the liberties hereby granted shall be built, erected, or made in or upon the premises, in good and substantial repair, order, and condition in all respects, and in such repair, order, and condition will at the end or sooner determination of the said term peaceably and quietly leave and yield up the same premises unto the lessor, save and except railways, steam engines, cranes, and other machinery, and fixtures which shall be erected, set up, fixed, or made by the lessee for the purpose of trade.

not to commit damage and trespass, or to pay compensation therefor;

11. The lessee, his agents, servants, workmen, chapmen, and customers, will, during the said term, commit and do as little trespass and damage as may be to the tenants and occupiers for the time being of the said lands by the use and exercise of the liberties, powers, and privileges hereinbefore granted; and the lessee will over and above the said rents and payments hereby reserved or made payable, pay and allow to the occupier or occupiers of the said lands, or any part thereof, the yearly sum of 3*l.* for every acre of such lands (and so in proportion for any less quantity than an acre), that shall be trespassed upon, injured or damaged by the works and operations aforesaid, except such lands as may be properly taken and used for any roads, or ways, or for the erection of buildings, or for the actual quarrying and getting of the said limestone and other minerals, such payments and allowances to be made to the occupier or occupiers of the said lands on the —— day of ——, in each year, and to be continued till the lands or grounds so to be trespassed upon,

injured, or damaged shall have been made good again and put in a proper state and condition.

to fence off quarries;

12. The lessee will, during the said term, at his own costs and charges, use all necessary and proper means to fence off and guard all the quarries, pits, shafts, openings, railways, and roads now made, or hereafter to be made, and make full satisfaction to the occupier or occupiers of such lands as aforesaid, for all such loss, injury, or damage as shall or may be sustained by him or them, or any of them, by reason of horses, cattle, or sheep falling into or getting upon the said quarries, pits, shafts, openings, railways, roads, or works, or otherwise, by the neglect or default of the lessee, his agents, servants, or workmen to use all such necessary and proper means as aforesaid, when or immediately after such loss, injury, or damage shall happen, the amount of such loss, injury, or damage, in case of dispute, to be ascertained by arbitration in manner hereinafter provided.

to allow lessor to pass along roads, &c.;

13. The lessee will permit the lessor and his tenants, agents, servants, and labourers, and all persons duly authorised by him to pass and repass without let or hindrance across and over any railway or railways, but not along the lines thereof, and across, and over, and also along any other roads or ways whatsoever leading to or from the said quarries and works, or any part thereof, on foot or on horseback, or with horses, cattle, carts, waggons, traction engines, motor cars, or other carriages or vehicles however propelled, at his or their convenience respectively, but so that such passing and repassing shall not disturb or interrupt the reasonable use and enjoyment by the lessee of the liberties and privileges hereby granted more than the case shall require, and so also as that the person or persons so passing or repassing shall do as little damage to the said roads and ways as the nature of the case will admit of.

to remove and lay soil;

14. The lessee, his agents, servants, and workmen, will, before he or they open, sink, or make any quarry, pit, shaft, or opening, or any road or way under or by virtue of these presents, remove and take away the soil from such part of the land as is intended to be used for any of such purposes to the depth of ten inches at least, and lay the same in some proper and convenient place near thereto, so that either it may be preserved and kept for the purpose of being again laid thereon when any such quarries, pits, shafts, or openings, shall be filled up and any such roads or ways shall be

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disused, or that the lessor may at his option remove and take away or otherwise dispose of the said soil as he shall think proper.

not to damage timber, fences, &c.;

15. The lessee will, during the term, do as little damage or injury to the timber and other trees, and to the fences growing or being upon any part or parts of the said lands as the nature of his works and operations will reasonably admit of, and that when any of the fences are unavoidably destroyed or injured the same shall be replaced or amended by and at the expense of the lessee in a proper and workmanlike manner as may be required by the lessor, or his agent or agents, and to his or their satisfaction.

to work quarries in proper manner;

16. The lessee will, during the said term, work and carry on the said quarries and works in a proper and workmanlike manner, and after the best and most approved method of working and carrying on similar quarries and works in the neighbourhood, and will leave open and in good working condition and repair all the pits, delphs, shafts, and drifts which shall be in use or in anywise serviceable in the working and carrying on the same quarries and works.

to permit lessor and his agents, &c. to inspect state of works;

17. It shall be lawful for the lessor and his agents, bailiffs, servants, or workmen, at all times in the daytime, and at his and their free will and pleasure, to go into and upon the premises to view and inspect the state and condition thereof, and to make such other observations and examinations into and concerning the same as he, they, or any of them shall think proper, and in case the lessee shall be found to be working or using the said quarries or works in an improper or unworkmanlike manner, then and in such case it shall be lawful for the lessor to give notice in writing to the lessee, or his agent or agents, to stop and discontinue the further working of the said quarries and works until full satisfaction and amends shall have been made for the loss, damage, or injury which shall have been occasioned or sustained to or by the lessor by reason of such improper working or user as aforesaid, such satisfaction and amends to be ascertained, in case of disagreement between the parties hereto, by arbitration in manner hereinafter provided.

to permit lessor to carry on works on default of lessee;

18. If in the course of working and carrying on the said quarries and works, or of making any railways or roads, or doing any other act or thing by virtue of these presents, any vein or veins, or pipe or pipes of lead ore, shall happen at any time during the term to be found or discovered by the lessee, or any other person or persons employed by or under him, within or upon

the premises; and if it shall happen that he or they shall neglect or refuse effectually to work and quarry all and any the said veins, pipes, and works of lead ore, and shall work part or some of them only, and shall permit and suffer others of them to stand unwrought for the space of three months together at any one time, then and in every such case, and as often as it shall so happen, it shall and may be lawful to and for the lessor, and his and their servants, agents, workmen, and he and they are hereby authorised and empowered, after the expiration of six calendar months' previous notice in writing to the lessee, to enter upon such of the said veins, pipes, and works of lead ore only as shall happen to stand so unwrought as aforesaid, and the same to have, take, and enjoy, and either to permit and suffer them, or any of them, from thenceforward to continue standing and unwrought, or at his and their will and pleasure to work and prosecute, and the ore and spar there found to take and carry away and convert to his and their own proper use and benefit without any account to be rendered or delivered to, or any interruption or interference on the part of the lessee, for or in respect of the same or any part thereof, and without making any compensation for the same or any part thereof, and in working and prosecuting such veins, pipes, and works of lead ore, and raising the ore and spar therefrom, to enter upon, go down, and pass and repass along all and every the shafts, pits, and premises hereby demised, for the more effectually and conveniently working the same veins and pipes of lead ore, and raising the lead ore therefrom, without any such interruption or interference or making any such compensation as aforesaid.

to carry on railway only limestone, &c. gotten from the premises.

19. The lessee, or any person or persons employed by or under him, will not at any time or times during the continuance of this demise, carry or convey, or be concerned in carrying or conveying, any gritstone along or upon the said railway so intended to be made to communicate with the said —— Railway as aforesaid, or allow or permit such railway to be used for the purpose of carrying or conveying any gritstone, other than such as shall be gotten, raised, made, or produced under or by virtue of this present demise, save and except as provided by clause 20 hereof.

To convey on railway gritstone, &c.

20. The lessee will from time to time and at all times during the said term, when required so to do by the lessor, or his agent or agents, carry and convey along the said line of railway so

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intended to be made as aforesaid, or along any part thereof, to the said —— Railway, all such gritstone as shall or may be gotten or raised from any part or parts of the said lands, estates, and premises of the lessor (such gritstone so to be carried and conveyed not to exceed the weight of one ton on each waggon), on being paid the sum of —— per ton for the conveyance and carriage of such gritstone along the line of the said railway.

from lessor's adjoining lands at specified rate.

Lessor's covenants:

And the lessor hereby covenants with the lessee as follows, that is to say:—

for quiet enjoyment;

21. The lessee paying the said rents or sums of money hereby respectively reserved and made payable, and observing and performing the several covenants and agreements hereinbefore contained, which on his part are or ought to be paid, observed, or performed, shall quietly hold and enjoy the premises for and during the said term, without any interruption from the lessor, or any person lawfully claiming under or in trust for him.

to pay land tax;

22. The lessor will from time to time and at all times, during the said term, pay and satisfy and discharge the land tax assessed or imposed upon the said quarries and premises hereby demised, or upon any part thereof, and from time to time indemnify the lessee from and against the payment thereof.

to renew lease, if requested.

23. The lessor will, at the costs and charges of the lessee, if thereto requested by him, at any time before the expiration of the first seven years of the said term, grant another lease of the premises to the lessee for the further term of seven years, to commence from the expiration of the term hereby granted, at the same rents, and containing the like covenants and agreements as are in these presents contained (this present covenant excepted), he the lessee executing a counterpart thereof.

PROVIDED ALWAYS, and it is hereby agreed and declared as follows:—

Proviso for re-entry.

24. If the said rents, royalties, dues, or sums of money hereinbefore severally reserved and made payable, or any part or parts thereof respectively, shall happen to be in arrear, unpaid, or unrendered for the space of —— days next after any of the said days or times when the same ought to be paid or rendered as aforesaid, and the same shall be lawfully demanded at the expiration of those twenty-one days, or at any time afterwards, and shall not be paid or rendered at the time of such demand [*or*, "whether the

same shall have been legally or formally demanded or not "], or if the lessee shall not in all other respects observe and perform all and singular the covenants, conditions, stipulations, matters, and things hereinbefore contained, and on his part to be observed and performed, or if the demised quarries and premises shall be taken in execution, or if the person or persons or corporation in whom the demised premises, or any part thereof, are for the time being vested, or any of them, shall become bankrupt (which expression, in the case of persons, includes entering into any arrangement or composition with or for the benefit of creditors, and, in the case of a corporation, includes entering into liquidation, whether voluntary, save for the purpose of amalgamation or reconstruction, or compulsory), then, or in any of such cases respectively, it shall be lawful for the lessor into, and upon, all and singular the premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again and enjoy as in his former estate, anything herein contained to the contrary thereof in anywise notwithstanding.

Power for lessee to determine lease at end of six months.

25. It shall be lawful for the lessee, at [any time after] the expiration of six calendar months of the term hereby granted, by giving six calendar months' previous notice in writing to the lessor, to determine and make void these presents, and the term hereby granted, anything hereinbefore contained to the contrary in anywise notwithstanding.

Proviso as to notices.

26. All notices hereby required or authorised to be given to the lessor or lessee respectively shall be in writing, and shall be deemed to be sufficiently given and served if given and served in any of the manners provided by sect. 67 of the Conveyancing Act, 1881, with regard to notices authorised or required by that Act to be given to lessors and lessees respectively.

Arbitration clause.

27. And, lastly, if any dispute or disputes shall arise or happen between the parties hereto touching or concerning the working and carrying on the said quarries and works, or any other matter or thing hereinbefore contained, then and in such case the said disputes shall be referred to and determined by two indifferent persons, one to be chosen by each party, and in case such referees cannot agree, then the same shall be referred to and determined by such third or other person as the said referees shall choose and elect for that purpose, And this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statu-

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tory modification or re-enactment thereof for the time being in force, the provisions whereof shall, as far as applicable, be applied.

IN WITNESS, &c.

XXII. AGREEMENT *for the* LETTING *of a* BRICKFIELD *from* YEAR *to* YEAR.

AN AGREEMENT (*r*), made the —— day of ——, 19--,

Parties. BETWEEN [*lessor*], of, &c. (who and his heirs and assigns are hereinafter, unless the contrary appears, called "the lessor"), of the one part, and [*lessee*], of, &c. (who and his executors, administrators and assigns, are hereinafter, unless the contrary appears, called "the lessee"), of the other part.

Parcels. Liberty to dig clay, and make bricks, &c.

1. The lessor agrees to let, and the lessee agrees to take, ALL THAT piece or parcel of ground, situate, &c., Together with full liberty to the lessee, his executors, administrators, and assigns to dig, work, and get clay, brick-earth, and sand therefrom; and to make, manufacture, and burn the same into bricks, pipes, and tiles; and for that purpose to erect and construct on the same piece or parcel of land such machinery, kilns, sheds, or other buildings and works as may be necessary.

Term.

2. The tenancy shall be for one year, commencing from the —— day of —— next, and shall continue thereafter from year to year, but shall be determinable on the —— day of ——, or the —— day of —— in any year, by either party giving to the other six months' previous notice in writing.

Rent and royalties.

3. The lessee shall, during the continuance of the tenancy, pay the several rents and royalties following, that is to say: a fixed rent of £—— per annum to be paid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year without any deduction (*rr*), except for landlord's property tax; and also a royalty of —— for every 1,000 bricks, to be paid on the days aforesaid, on all bricks manufactured on the said piece or parcel of land during the half-year preceding each such payment.

Stamp. (*r*) Stamp, *ad valorem* on yearly rent: *ante*, p. 506.

Mineral rights duty. (*rr*) No mineral rights duty is payable in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel: see Finance (1909-10) Act, 1910, s. 20 (5).

4. The lessee shall pay all existing and future taxes, rates, outgoings, and assessments which now are, or at any time during the continuance of this demise, shall be imposed upon or payable by either the landlord or tenant in respect of the said piece or parcel of land. Rates and taxes.

5. The lessee will at all times during the continuance of the tenancy, unless prevented by unavoidable accident, effectually and vigorously carry on the manufacture of bricks, pipes, and tiles on the said piece or parcel of land, and not discontinue the same, unless prevented as aforesaid, for the space of more than —— weeks in any one year. Covenants by tenant to carry on manufacture;

6. The lessee will, at his own expense, within three calendar months after any clay, brick-earth, or sand shall have been taken, to the extent of —— acres, level the ground from which the same respectively shall have been taken, and replace the whole of the surface soil removed thereupon, so as to render the surface fit for agricultural purposes, and will not carry away any clay, brick-earth, or sand gotten on the demised premises, but will manufacture the same thereon and not elsewhere into bricks, pipes or tiles. to restore surface.

7. The lessee will at all times keep at the office on the demised premises books of accounts, showing the number of bricks, pipes and tiles manufactured as aforesaid, and the sales thereof, and of the times of removal of the same from the premises, and all other particulars which may be usual or proper. And will permit the lessor, or his agents, to inspect and take copies of or extract from such books of account at all reasonable times.

[*Here insert any special stipulation.*]

8. Provided always, that if the rent and royalty hereinbefore reserved, or any part thereof respectively, shall be unpaid by the space of —— days after the same shall respectively have become payable (whether the same shall have been legally or formally demanded or not), or in case of breach by the lessee of any of the foregoing stipulations or agreements on his part to be performed or observed, the lessor may re-enter upon the said piece or parcel of land, or any part thereof, in the name of the whole, and thereupon this agreement shall determine and become void, but without prejudice to any remedy of the lessor in respect of any breach of the said stipulations or agreements. Power of re-entry.

As witness, &c.

XXIII. LEASE BY MORTGAGEES AND A MORTGAGOR.

Leases (Miscellaneous).

XXIII. LEASE *by* Mortgagees *and a* Mortgagor (*a*).

Parties and interpretation clause.

THIS INDENTURE (*b*), made the —— day of ——, 19—, Between [*mortgagee*], of, &c., and [*mortgagee*], of, &c. (who and the person or persons for the time being entitled to the reversion in the hereditaments hereby demised expectant on the term hereby granted, unless the contrary appears, are hereinafter called "the lessors"), of the first part; [*mortgagor*], of, &c. (hereinafter called "the mortgagor"), of the second part; and [*lessee*], of, &c. (who and his executors, administrators, and assigns, unless the contrary appears, are hereinafter called "the lessee"), of the third part: Whereas under or by virtue of an indenture of mortgage dated ——, &c., and expressed to be made between [*parties*] (being a mortgage to secure to the lessors the repayment by the mortgagor of a sum of £——, with interest thereon as in the same indenture is mentioned), the lessors are mortgagees of the fee simple of the hereditaments hereinafter described and intended to be hereby demised: And whereas the mortgagor is the owner of the fee simple and inheritance of the said hereditaments, subject to the said mortgage. NOW THIS INDENTURE WITNESSETH that, in consideration of the premium or sum of £—— now paid by the lessee at the request of the mortgagor to the lessors in part payment and satisfaction of their said mortgage debt of £—— (the receipt whereof is hereby acknowledged) and in consideration of the covenants on the part of the lessee to be observed and performed and provisions herein contained, the lessors, at the request of the mortgagor, hereby demise,

Recitals of title of mortgagees,

and mortgagor.

Testatum.

(*a*) As to the statutory powers of mortgagors and mortgagees respectively when in possession to grant occupation and building leases, see Conveyancing Act, 1881, s. 18; and Conveyancing Act, 1911, s. 3. The concurrence of mortgagees and mortgagors in leases (where the mortgage was made after the 30th of December, 1881), will be comparatively seldom necessary. Such concurrence will, however, be required, if the statutory powers are expressly excluded by the mortgage deed: or if the terms of the proposed lease are not within the statutory powers, as in the case of the above precedent. The concurrence of mortgagees and mortgagor will also be required in the case of mining leases.

(*b*) Stamp, as a conveyance by way of sale in respect of the amount of the premium, and *ad valorem* in respect of the rent: *ante*, p. 506.

and the mortgagor hereby demises and confirms unto the lessee, ALL [*parcels*], TO HOLD the premises unto the lessee from the —— day of ——, 19—, for the term of —— years next ensuing, PAYING, &c.: AND the lessee for himself and his assigns hereby covenants with the lessors, their heirs and assigns, and as a separate covenant with the mortgagor, his heirs and assigns, in manner following [*Covenant to pay rent and taxes, ante*, p. 530. *Add other lessee's covenants according to the nature of the property and the intention of the parties*]. AND each of the lessors respectively and the mortgagor, so far as relates to the acts and deeds of himself and of persons claiming under, through, or in trust for him respectively, hereby covenants with the lessee that the lessee paying the said rent and observing and performing all the covenants on his part herein contained, may peaceably enjoy the premises hereby demised without interruption or disturbance from or by the lessors or the mortgagor or any of them, or any person or persons claiming under, through, or in trust for them or any of them [*Add any special covenants by the lessors* (*d*)]. PROVIDED ALWAYS that in the meantime, and until the lessors shall require payment to themselves of the rents and profits of the said premises, and shall give unto the lessee, or leave at the said premises, notice in writing requiring the lessee to pay such rent and profits to them, the said rent shall be paid to the mortgagor, his heirs and assigns; AND the receipt or receipts of the said mortgagor, his heirs or assigns, shall, until such notice shall be given or left as aforesaid, be a good and sufficient release and discharge for the said rent, or any part thereof, unto the lessee; AND if, at any time or times

Demise.

Habendum.

Reddendum.

Lessee's covenants.

Lessors' and mortgagor's covenants.

For quiet enjoyment (*c*).

Proviso for payment of rent to mortgagor until notice by mortgagee.

Proviso that mortgagor's receipts, until such notice, shall be good discharges.

Proviso that,

(*c*) It would appear that, in strictness, mortgagees cannot be required to enter into a covenant for quiet enjoyment or into any covenant except that they have not incumbered: see *Worley* v. *Frampton*, 5 Hare, 560. If, therefore, the lessor-mortgagees refuse to give a covenant for quiet enjoyment, insert after the words "hereby demised" the words,

"but not so as to imply any warrant or covenant,"

and omit in this covenant the words,

"each of the lessors respectively and."

(*d*) The covenants will generally run as in the case of an ordinary lessor, except as otherwise indicated in the text, and also except that (i) the power to enter and view the premises will be given "to the lessors and to the mortgagor, his heirs and assigns, and their respective agents," &c.: (ii) the insurance will be effected in the joint names of the lessors (*i.e.*, the mortgagees) and the lessee in an office to be approved by the

XXIII. LEASE BY MORTGAGEES AND A MORTGAGOR.

until notice by mortgagees, mortgagor may distrain for rent.

previously to such notice being given or left as aforesaid, the said rent of £——, or any part thereof, shall be in arrear for the space of fourteen days (whether legally demanded or not), it shall be lawful for the mortgagor, his heirs or assigns, to enter into and distrain upon the hereditaments and premises hereby demised: And the distress or distresses then and there found, to sell and dispose of in due course of law, and to apply the produce thereof in or towards payment of the said rent so in arrears, and the costs, charges, and expenses which shall be sustained or incurred in consequence of the non-payment thereof; Provided always, &c. [*that* "the lessors" *may re-enter on non-payment of rent, or breach of covenants, ut ante*, p. 532].

Proviso for re-entry.

In witness, &c.

XXIV. LEASE *for* Years Determinable *on* Lives, *with* Covenant *for* Renewal, *at the* Dropping *of the* First Life, *on* Payment *of a* Fine. [Form *of* Covenant *for* Renewal *in* Lease *for* Years, *in Note*] (*e*).

Parties. Recital of former lease, with covenant for renewal;

THIS INDENTURE (*f*), made the —— day of ——, Between [*lessor*], of, &c. (who and his heirs and assigns, unless the contrary appears, are hereinafter called "the lessor"), of the one part, and [*lessee*], of, &c. (who and his heirs and assigns, unless the contrary appears, are hereinafter called "the lessee"), of the other part: Whereas, by an indenture of lease, dated the —— day of ——, and made between the lessor of the one part, and the

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lessors, but the lessee will covenant to produce the policy, &c. "to the lessors and also to the mortgagor, his heirs and assigns."

"Term of a lease" under Finance (1909-10) Act, 1910. Registration. Stamp.

(*e*) As to what is the "term of a lease" as defined by the Finance (1909-10) Act, 1910, in the case of renewable leases and leases for lives, see sect. 41 of that Act. This being a lease for "two or more" lives, must, if the property is in a "compulsory" district, be registered, as until registration the legal estate will not pass: see L. T. R. 68—70.

(*f*) Stamp, *ad valorem* on amount of rent reserved, as on a lease for an indefinite term, and a further *ad valorem* stamp on the amount of the premium or fine: see *ante*, pp. 506, 507. As to covenants for renewal of leases, see K. & E. 10th ed. vol. i. p. 875, note (*q*). As to increment value duty and reversion duty, see *ante*, p. 508.

lessee of the other part, the lessor demised unto the lessee [his executors, administrators and assigns] the messuage or tenement and hereditaments hereinafter described for the term of ninety-nine years from the —— day of ——, if [*cestuis que vie*] or any of them should so long live, at the yearly rent of £—— payable quarterly: AND in the said indenture of lease was contained a covenant on the part of the lessor, that upon the decease of either of the said [*cestuis que vie*], the lessor would, at the request of the lessee, and upon the surrender of the said lease, and the payment of the sum of £—— by way of fine, execute a new lease of the said premises to the lessee at the same yearly rent, and with and subject to such and the same covenants, provisoes, and agreements (including the covenant now in recital), as were reserved and contained in the above recited lease. AND WHEREAS the said [*deceased cestui que vie*], one of the *cestuis que vie* named in the said indenture of lease, died on or about the —— day of —— last past, and the said lessee has accordingly called upon the lessor to grant him a renewed lease in pursuance of his said covenant, for the life of [*new cestui que vie*], now of the age of —— years, or thereabouts, in the room of the said [*deceased cestui que vie*] deceased: AND WHEREAS, by a deed poll under the hand and seal of the lessee, bearing even date herewith, the lessee has surrendered unto the lessor, and his heirs, ALL and singular the said messuage and premises, to the intent that the lessor may grant a new lease to him thereof during the lives of the said [*surviving cestuis que vie*] and the said [*new cestui que vie*] respectively, as hereinafter is mentioned. NOW THIS INDENTURE WITNESSETH that, in pursuance of the above recited covenant, and of the said surrender, and also in consideration of the sum of £—— to the lessor paid by the lessee, at or before the execution of these presents (the receipt whereof is hereby acknowledged), he the lessor hereby demises unto the lessee, ALL THAT messuage, &c. [*describe parcels*]: TO HOLD the premises unto the lessee from the date of these presents for the term of ninety-nine years if the said [*surviving cestuis que vie*] and [*new cestui que vie*], or any of them shall so long live: PAYING therefor yearly during the said demise, and so in proportion for any less period than a year, the yearly rent or sum of £—— by equal quarterly instalments, on the —— day of ——, &c., in every year, clear of and from all present and future taxes,

death of one *cestui que vie*;

surrender.

Testatum.

Demise.

XXIV. RENEWABLE LEASE FOR LIVES.

rates, assessments, deductions, and abatements whatsoever, except for landlord's property tax, the first payment thereof to be made on the —— day of —— next ensuing (if the said [*cestuis que vie*], or any of them, shall be then living). [*Add covenants by the lessee to pay rent and taxes, &c., and to keep demised premises in repair, and to permit lessor to enter to view the premises, to repair upon notice, and to deliver up at the end of the term, and other lessee's covenants as in Precedent VII., ante*, pp. 530 *and* 531.] AND the lessor hereby covenants with the lessee that [*covenant for quiet enjoyment, ante*, p. 531]. AND the lessor hereby covenants with the lessee that, in case the lessee shall, upon the decease of any one of them, the said [*cestuis que vie*], be desirous of taking a further or renewed lease of the said premises for another life, and shall, as is hereinafter more particularly mentioned, within the space of three calendar months next after such decease, give notice in writing of such desire unto the lessor, or leave for him such notice at his last known place of abode in England, and shall nominate any person in the room or stead of the [*cestui que vie*], who shall have so died, he the lessor will, at the request, and at the cost of the lessee, and on the surrender of this present lease (such surrender to be at the like cost), and on payment of the sum of £—— by way of fine or premium for such renewal, forthwith duly make and execute unto him the lessee, upon his duly executing a counterpart, a new lease of the said premises for the further term of ninety-nine years if such of the said [*cestuis que vie*] as shall be then living and the person so to be nominated shall so long live, at the same yearly rent, and with and subject to such and the same covenants, provisoes, and agreements, including this present covenant, as are herein contained: AND FURTHER that if, within the said period of three calendar months after the decease of any one of them the said [*cestuis que vie*], and before any renewed lease or leases shall have been granted of the said premises by virtue of the covenant hereinbefore contained, any other or others of the said [*cestuis que vie*], shall depart this life, then it shall be lawful for the lessee, if he shall think proper, to name or insert another life or lives in the lease so to be granted as aforesaid in the room of the life or lives which shall so drop, he or they paying unto the lessor, within the said period of three calendar months after the dropping of the first life the further sum of £—— in respect of the said life, or each of the said lives, as the case may be, which shall be

Covenant by lessor to renew at the dropping of a life;

on surrender of present lease and payment of a fine.

so inserted in the said lease, it being the intention of the parties hereto that the lessee shall not be obliged, unless he shall think proper, provided he renews within the period aforesaid, to incur the expense of a further or additional lease or leases, in respect of the dropping of the said second and third lives as aforesaid (*g*).

In witness, &c.

XXV. UNDERLEASE *by a* Person *holding under a* Renewable Lease *comprising other* Property.—Covenants *by* Lessees *to* expend *a* Sum *in* Improvements—*to* keep *the* Premises, *with the* Improvements, *in* Repair—*to* pay *a* Fine *to the* Lessor *on* Assigning, *&c.* Covenant *by* Lessor *to* Procure Renewal *of* Original Lease, *and to* Grant *a* New Underlease *on such* Renewal; *but* Lessees *to be at* Liberty *to* Obtain *a* Lease Immediately *from the* Superior Landlord.—Acknowledgment *of* Right *of* Lessees *to* Production *of* Original Lease.

THIS INDENTURE (*h*), made, &c., 19—, Between [*lessor*], of, &c. (hereinafter called "the lessor," which expression shall

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(*g*) The ordinary form of a covenant for renewal in a lease for *years* is as follows:—

Covenant for renewal in lease for years.

"And the lessor hereby further covenants with the lessee that in case the lessee shall be desirous of taking a new lease of the premises hereby demised, after the expiration of the term hereby granted, and shall, at least six calendar months before the expiration thereof, signify such his desire, by a notice in writing, to be delivered to the lessor, or left at his usual or last known place of abode in England, he the lessor will, at or before the expiration of the said term, at the costs and charges of the lessee, and on payment of the sum of £—— by way of premium or fine for such renewal, forthwith make and execute unto him and them a new lease of the premises hereby demised, for a term of —— years, to commence from and after the expiration of the term hereby granted, at the like rent, and with and subject to the like

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(*h*) Stamp, *ad valorem* on amount of rent: *ante*, p. 506. As to increment value duty and reversion duty, see *ante*, p. 508. Stamp.

XXV. UNDER-LEASE, WITH PROVISIONS FOR THE INDEMNITY OF THE LESSEES, RENEWAL, ETC.

Parties.

Testatum.

Parcels.

include his executors, administrators, and assigns, where the context so admits), of the one part, and [*lessee*], of, &c., and [*lessee*], of, &c. (hereinafter called "the lessees," which expression shall include their executors, administrators, and assigns, where the context so admits), of the other part; WITNESSETH that, in consideration of the yearly rent hereby reserved, and of the covenants and agreements herein contained, and on the part of the lessees to be respectively paid, observed, and performed, the lessor hereby demises unto the lessees ALL THAT piece of ground situate on the west side of —— Street, in the parish of ——, with the messuages and buildings now standing thereon, and which are intended to be pulled down; AND ALSO all the messuages and buildings to be erected and built on the site of the messuages and buildings to be so pulled down; which piece of ground, with the abuttals thereof, is particularly delineated and described in the plan thereof drawn in the margin of these presents; AND which piece of ground, with other property, is held by the lessor, under a lease granted to him by [*original lessor*], of, &c., by indenture, dated the —— day of ——, 19—, for a term of twenty-one years from the 25th day of March then last, and which indenture contains a covenant on the part of the said [*original lessor*], to grant a renewed lease, at the expiration of the fourteenth year of the said term, for a like term of twenty-one years, and with the like covenant for renewal as is therein contained; TO HOLD the premises hereby demised unto the lessees from the 24th day of June, 19—, for the term of —— years and three-quarters of

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covenants, provisoes, and agreements as are herein contained, except only this present covenant or agreement for renewal [or including this present covenant for renewal]," &c.

The expression "the lessee" will, of course, be explained in the interpretation clause to include the "executors, administrators, and assigns," of the lessee. As to whether a lease containing a covenant for renewal can be granted under the Settled Estates Act, 1877, or the Settled Land Act, 1882, or under a special power requiring "the best rent" to be obtained, see *Re Farnell*, 33 Ch. D. 599; *Gas Light and Coke Co.* v. *Towse*, 35 Ch. D. 519. A covenant to renew a lease at the end of a period of years is not void for remoteness: *London and S. W. Rail. Co.* v. *Gomm*, 20 Ch. D. 562, at p. 579.

XXV. UNDERLEASE, WITH PROVISIONS FOR THE INDEMNITY OF THE LESSEES, RENEWAL, ETC.

another year, wanting —— days (*i*); Paying therefor yearly, during the term hereby granted, except the last three-quarters of a year wanting —— days, the rent of £—— by equal quarterly payments, on the 29th day of September, &c., in every year, clear of all deductions; the first of such quarterly payments to be made on the 29th day of September, 19—; And also Paying for the last three-quarters of a year, wanting —— days, of the said term, the rent of £——, to be payable, clear of all deductions as aforesaid, on the days and in the manner hereinafter mentioned; (that is to say), the sum of £—— by two equal payments on the 29th day of September and the 25th day of December next preceding the expiration of the said term, and the remaining sum of £—— on the last day but one of the said term (*k*): And the lessees do, and each of them doth hereby, covenant with the lessor, that the lessees will, during the term hereby granted, pay the rents hereby reserved in manner aforesaid; And also will pay and discharge the land tax, and all other taxes, rates, assessments, and impositions whatsoever, which now are, or which at any time hereafter, during the continuance of this demise, shall be assessed, charged, or imposed upon the said premises, or any part thereof, or upon the landlord or tenant in respect thereof; And also will, within the space of two years from the date of these presents, expend in making substantial new erections,

The three-quarters of a year wanting two days.

By two equal payments.

Joint and several covenant to pay rents,

and taxes.

(*i*) Leaving a nominal reversion in the present lessor.

(*k*) A deduction will be made from the last payment in respect of the days wanting. It sometimes happens that persons having renewable leases, and who are desirous of selling a portion of the demised property, instead of *assigning* such portion to a purchaser, grant an underlease, for a premium, at a nominal rent, leaving in themselves (as in this case) a bare reversion of a few days only; and by this means the right of renewal is reserved. In such case the term of the *reddendum* should be—

Demise at nominal rent.

"paying therefor yearly, during the said term, the rent of a peppercorn if the same be lawfully demanded."

In such a case, as the lessor retains no substantial interest in the premises, he has no occasion for any covenants on the part of the lessee further than to secure the performance of the covenants in the original lease. His own covenants will be the same as in the text, omitting that respecting the deduction of the original rent out of the sub-rent, if paid by the underlessee (vide *post*, p. 633), which, of course, will not apply.

XXV. UNDERLEASE, WITH PROVISIONS FOR THE INDEMNITY OF THE LESSEES, RENEWAL, ETC.

buildings, and improvements upon the premises hereby demised, the full sum of £—— (they being at liberty for that purpose, and hereby undertaking to pull down and remove the messuages and buildings now standing on the said piece or parcel of ground, or any of them) conformably to the general plan of building agreed upon between the lessor and the said [*original lessor*], and under the inspection and control of, as well the surveyor of the said [*original lessor*], his heirs or assigns, as the surveyor of the lessor, and to be executed and finished to the satisfaction of such respective surveyors; AND will, within the time aforesaid, produce for the inspection as well of the said [*original lessor*], his heirs or assigns, as of the lessor or their respective surveyors for the time being, the bills and receipts of the several workmen and tradesmen to be employed in or about such erections and buildings, or such other satisfactory evidence as may reasonably be required, in order to prove that the said sum of £—— has been actually laid out and expended in manner aforesaid; AND ALSO will, at their own expense, during the term hereby granted, in all respects well and sufficiently uphold, preserve, and keep the said premises, with all the buildings to be erected and built thereon, in manner aforesaid, and also the walls, fences, drains, sinks, sewers, and appurtenances thereunto belonging, in good and tenantable repair and condition; AND ALSO will, at the expiration or other sooner determination of the said term, peaceably yield up unto the lessor, his executors, administrators, or assigns, the said premises, with the buildings to be so erected and built thereon as aforesaid, in good and tenantable repair and condition, together with all such fixtures, fastenings, improvements, and things as at any time or times, during the continuance of this demise, shall be set up or affixed in, upon, or to the said premises, or any part thereof: AND ALSO [*covenant to insure against fire*, ut ante, p. 535, *and power for lessor* (*l*) *to enter to examine repairs, and covenant to make repairs accordingly*, ut ante, *p.* 531]: AND ALSO, that in case the lessees shall, at any time or times hereafter, be desirous of assigning or underletting, or otherwise disposing of the said premises, or any part or parts thereof, for the whole

To expend a specified sum in improvements;

to keep the premises with improvements in repair;

to deliver up possession at end of term;

to insure;

to pay a fine to the lessor on assigning or underletting.

(*l*) In underleases this power should be made to extend to the original landlord, where a similar power of entry is reserved to him by the original lease.

XXV. UNDERLEASE, WITH PROVISIONS FOR THE INDEMNITY OF THE LESSEES, RENEWAL, ETC.

or any part of the term hereby granted, then the lessees will, previously to the making or executing any and every assignment, to be at any time or from time to time made, of the whole of the said premises, for the whole unexpired residue of the term hereby granted, pay to the lessor a sum equal to a moiety of the amount of one year's rent hereby reserved, by way of fine, and will, previously to the execution of any and every assignment, to be at any time or from time to time made, of any part less than the whole of the said premises, for the whole of the term hereby granted, pay to the lessor the sum of £——, by way of fine, and will, previously to the making or executing of any and every underlease, or other disposition, to be at any time or from time to time made, of the whole or any part of the said premises, for any part less than the whole of the term hereby granted, pay unto the lessor a sum equal to one moiety of one year's rent intended to be reserved on such underlease or disposition, if such rent shall exceed the sum of £——; but if such rent shall be nominal only, or shall be less than the yearly sum of £——, then the sum of £—— by way of fine; And that, in case any question, controversy, or dispute shall arise, during the said term, between the lessees and any other tenant or tenants, under-tenant or under-tenants of the said [*original landlord*], his heirs or assigns, occupying premises near or adjoining to the premises hereby demised, concerning any light, watercourse, annoyance, or other matter or thing relating to the said premises, then and so often as the same shall happen, the lessees shall submit to and abide by such award or determination as the said [*original lessor*], his heirs or assigns, shall make or declare, in writing, concerning every such question or dispute: And the lessor hereby covenants with the lessees that he the lessor will duly pay the rent reserved by the lease so granted to him by the said [*original lessor*] as aforesaid, and observe and perform the covenants, conditions, and agreements therein contained and on the part of him the lessor to be observed and performed; And will keep the lessees indemnified against the payment of the same rent, and the performance of the same covenants, conditions, and agreements, except so far as such covenants, conditions, and agreements are conformable to the covenants, conditions, and agreements hereinbefore contained, and ought to be observed and performed by the lessees; And further, that it shall be lawful for the lessees from time to time to deduct and

Disputes to be settled by original lessor.

Covenant by lessor to pay the rent reserved by the original lease;

and perform the covenants;

and keep the lessees indemnified therefrom.

Lessees may deduct payments made

XXV. UNDERLEASE, WITH PROVISIONS FOR THE INDEMNITY OF THE LESSEES, RENEWAL, ETC.

retain out of the rent hereinbefore reserved, any sum or sums of money which they shall have paid to the said [*original lessor*], his heirs and assigns, in consequence of any distress or distresses made by him or them upon the premises hereby demised, for the rent reserved by the said indenture of lease of the —— day of ——, 19—, or in order to avoid any such distress or distresses being made, and all costs and expenses which shall have been incurred by the lessees, by reason of the non-payment of the said rent by the lessor, or the non-performance by him of any of the covenants in the said indenture of lease contained, and on his part to be performed, whether such rent or breach of covenant shall have accrued or occurred within the same period as the rent out of which the said moneys shall be deducted, or at any antecedent or other period (*m*); AND ALSO that they, the lessees, paying the rent hereby reserved, and performing and observing the covenants on their part herein contained, shall quietly hold and enjoy the premises hereby demised, and every part thereof, during the term hereby granted, without any interruption or disturbance by the lessor, or any person or persons lawfully or equitably claiming through or under him: AND FURTHER, that the lessor, and all persons lawfully claiming by, from, or under him, will, upon the expiration of the fourteenth year of the term of twenty-one years granted by the said indenture of the —— day of ——, 19—, procure a new lease of all the premises comprised in the said indenture of lease to be granted to him or them by the said [*original lessor*], his heirs or assigns, in pursuance of the covenant hereinbefore mentioned, for a term of twenty-one years thenceforth, at the like rent, and with the like covenants and agreements (including the said covenant for renewal (*n*)), as are contained in the said indenture of the —— day of ——, 19—; AND ALSO that the lessor, and all persons whosoever lawfully claiming by, from, or under him, will, upon such renewal by

to the original landlord out of the rent.

Covenant by lessor: for quiet enjoyment.

Covenant by lessor to renew the original lease (*mm*);

and upon such renewal to grant an

(*m*) If the lessor has become possessed of the lease by assignment, and especially if such assignment be recent, add—
"or before the lessor became possessed of the said indenture of lease, and the premises therein comprised."

(*mm*) See *Mostyn* v. *Fitzsimmons*, [1903] 1 K. B. 349; [1904] A. C. 46; *Re Baylis*, [1907] 2 Ch. 54.

(*n*) *Or*, "except the said covenant for renewal,"
as the case may be.

XXV. UNDERLEASE, WITH PROVISIONS FOR THE INDEMNITY OF THE LESSEES, RENEWAL, ETC.

the said [*original lessor*], his heirs or assigns, grant and execute to the lessees, or unto such other person or persons as they shall direct, an underlease or underleases of all and singular the premises hereby demised for the whole of the term created by such new demise as aforesaid, except the two last days thereof, under and subject to such and the same rent, covenants, provisoes, and agreements, as in these presents are reserved and contained, including this present covenant (*o*), they, the lessees, on their part, executing and delivering to the lessor a counterpart or counterparts of such underlease or underleases respectively, and paying a proportional part of the fines, fees, and other expenses attending such renewal (such proportional part to be fixed and determined by the improved values to be from time to time set by the [*original lessor*] upon the lands and tenements to be comprised in every such renewed lease): AND ALSO paying all the expenses of and incidental to the preparation and execution of such underlease or underleases and the counterpart or counterparts thereof: AND the amount of the payments so to be made by the lessees upon every such renewal, shall be settled and adjusted, in case of dispute concerning the same, by reference to the person who for the time being shall be the surveyor or agent of the said [*original lessor*], his heirs or assigns. [PROVIDED ALWAYS, that it shall be lawful for the lessees at any time hereafter to apply for and procure from the said [*original lessor*], his heirs or assigns, an original lease to be granted unto them the lessees of the premises hereby demised for their own use and benefit, and that in such case the lessor will, at the cost of the lessees, and upon payment by the lessees to the lessor of the sum of £——, join and concur in making such surrender of the premises hereby demised, as the lessees shall require, and that upon such lease being granted, the covenants and agreements hereinbefore contained on the part of the lessor, for the renewal of the lease of the said premises, and the covenant on the part of the lessees to pay a proportional part of the fine and expenses on every such renewal, shall cease, determine, and be absolutely void, anything hereinbefore contained to the contrary thereof in anywise notwithstanding:] PROVIDED ALWAYS that, in case the said yearly rents hereby reserved, or any part thereof respectively, shall be in

underlease to the present lessees.

Under-lessees to pay proportion of fine, &c.

Lessees to be at liberty to obtain a new licence directly from the original lessor.

Proviso for re-entry.

(*o*) *Or,* "except this present covenant," as the case may be.

XXV. UNDERLEASE, WITH PROVISIONS FOR THE INDEMNITY OF THE LESSEES, RENEWAL, ETC.

arrear by the space of —— days (whether the same shall have been legally demanded or not); or if the lessees shall not, in all respects, perform, observe, and keep all the covenants herein on their part contained; then, and in any such case, it shall be lawful for the lessor, into and upon the said premises, or any part thereof in the name of the whole, to re-enter and to repossess and enjoy the same as of his former estate, and this present demise shall thereupon absolutely cease and determine. AND LASTLY, the lessor hereby acknowledges the right of the lessees to the production of the said indenture of lease of the —— day of ——, 19—, and to delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

Acknowledgment of right to production of lease.

IN WITNESS, &c.

XXVI. UNDERLEASE *for the entire* TERM RESERVED *by the* ORIGINAL LEASE, *except the last* SEVEN DAYS *thereof, in* CONSIDERATION *of a* PREMIUM. COVENANTS *by* UNDERLESSEE *to* PAY RENT, *and to* OBSERVE *the* COVENANTS *of the* ORIGINAL LEASE, *and* INDEMNIFY *the* UNDERLESSOR *therefrom*.

Parties.

THIS INDENTURE (*p*), made, &c., BETWEEN [*lessor*], of, &c. (hereinafter called "the lessor," which expression shall include his executors, administrators, and assigns, where the context so admits), of the one part, and [*lessee*], of, &c. (hereinafter called "the lessee," which expression shall include his executors, administrators, and assigns, where the context so admits), of the other part: WHEREAS by an indenture of lease, dated, &c., and made between [*parties*], the messuage and hereditaments hereinafter described and intended to be hereby demised, were demised unto the lessor from the —— day of ——, 19—, for the term of ninety-nine years thereafter next ensuing, at the yearly rent of £——, and subject to the lessee's covenants and conditions therein contained: AND WHEREAS the lessor has agreed to grant unto the lessee an underlease of the said premises for the term and in manner hereinafter mentioned: NOW THIS INDENTURE WITNESSETH that, in consideration of £——, on or before the execution of these presents paid to the lessor by the lessee (the

Recitals:

of original lease;

of agreement for underlease.

Testatum.

Stamp.

(*p*) Stamp, *ad valorem* on rent as a lease, and also as a conveyance in respect of the premium: see *ante*, p. 506.

XXVI. UNDERLEASE WITH PROVISION FOR INDEMNITY OF LESSOR.

receipt whereof is hereby acknowledged), and of the rents and lessee's covenants hereinafter reserved and contained, he the lessor hereby demises unto the lessee ALL THAT messuage, &c. [*describe parcels*]: AND all other (if any) the premises comprised in and demised by the hereinbefore recited indenture of lease, TO HOLD the said premises hereby demised unto the said lessee from the —— day of ——, 19—, for all the residue then unexpired of the said term of ninety-nine years granted by the said indenture of lease, except the last seven days thereof: paying therefor during the said term hereby granted the yearly rent of £——, by equal quarterly payments, on the four usual quarter days, commencing with the 29th day of September, 19—, without any deduction, landlord's property tax only excepted: AND the lessee hereby covenants with the lessor that the lessee will pay the yearly rent of £—— hereby reserved, at the times and in manner aforesaid; AND will, during the said term, at all times observe and perform all the covenants, agreements, and conditions contained in the hereinbefore recited indenture of lease, and on the part of the lessee to be observed and performed, except the covenant for payment of the rent thereby reserved; AND will keep the lessor indemnified against the observance and performance of the same covenants, agreements, and conditions, and from all actions, claims, and demands in respect thereof; AND ALSO will, at the expiration or sooner determination of the term hereby granted, peaceably yield up unto the lessor the said premises hereby demised in such good and tenantable repair and condition as the same ought to be at the determination of the term therein granted by the hereinbefore recited indenture of lease, pursuant to the covenant in that behalf contained in the same indenture, to the intent that the lessor shall not, under such covenant as last aforesaid, be liable to pay any moneys to his superior landlord or landlords by reason of any want of reparation, painting, or other works required to be done by the lessee in and by the hereinbefore recited indenture of lease: AND FURTHER, that it shall be lawful for the lessor, as well as for the superior landlord or landlords for the time being of the said premises, and their respective agents, or surveyors, with or without workmen, twice or oftener yearly, during the said term hereby granted, in the daytime (first giving two previous days' notice in writing), to enter upon the said premises, and every part thereof, to take account of fixtures, and view the condition thereof, and of all defects, decays, and

Demise.
Parcels.
Habendum.
Reddendum.
Covenant by lessee to pay rent;
to observe covenants, &c. of original lease:
but to indemnify under-lessor therefrom;
to deliver up premises at end of term;
to permit lessor, &c. to enter to view and take account of fixtures, &c., and leave notices;

XXVI. UNDERLEASE WITH PROVISION FOR INDEMNITY OF LESSOR.

wants of reparation, or of painting and other works as aforesaid, that shall be found, to give or leave notice in writing, at or upon the said premises, or any part thereof, for the lessee to repair and supply the same defects, decays, and wants within the space of three calendar months from the time of giving or leaving such last mentioned notice, and that the lessee will repair and supply the same according to the terms of such notice; AND the lessor hereby covenants with the lessee that the lessor will duly pay the rent reserved by the hereinbefore recited indenture of lease, and keep the lessee indemnified against the same, and from all actions, proceedings, costs, damages, and expenses, claims, and demands in respect thereof: AND ALSO that he the lessee, paying the rent hereby reserved, and performing and observing the covenants on his part herein contained, shall quietly hold and enjoy the premises hereby demised, and every part thereof, during the term hereby granted, without any interruption or disturbance by the lessor or any person or persons lawfully or equitably claiming through or under him: PROVIDED ALWAYS, that in case the said rent hereby reserved shall be in arrear, &c. [*proviso for re-entry*, ut ante, *p.* 635]: AND LASTLY [*acknowledgment of right to production of* "the hereinbefore recited indenture of lease," *ut ante*, *p.* 636].

to repair on notice.

Lessor's covenants;

to pay superior rent;

for quiet enjoyment.

Proviso for re-entry.

Acknowledgment, &c.

IN WITNESS, &c.

XXVII. LEASE *of a* RIGHT *of* SHOOTING, *&c.* (*q*).

THIS INDENTURE (*r*), made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (hereinafter called "the lessor," which expression shall include his heirs and assigns, where the context so admits), of the one part, and [*lessee*], of, &c. (hereinafter called "the lessee," which expression shall include his executors,

Parties.

Deed necessary.

(*q*) As to whether a right of shooting, being an incorporeal hereditament, can only be effectually demised by deed, see *Bird* v. *Higginson*, 6 A. & E. 824; 6 L. J. Ex. 282; *R.* v. *Thurlston*, 1 E. & E. 502; *Lowe* v. *Adams*, [1901] 2 Ch. 598; *Radcliffe* v. *Hayes*, [1907] 1 Ir. R. 101; but see *Adams* v. *Clutterbuck*, 10 Q. B. D. 403. The sporting rights conferred by this demise are subject to the rights of the tenants in occupation of the land under the Ground Game Act, 1880, and the Ground Game Act, 1906: see *Sherrard* v. *Gascoigne*, [1900] 2 Q. B. 279; and an owner occupying his own land is an "occupier of land" within sect. 1 of the Ground Game Act, 1880: see *Anderson* v. *Vicary*, [1900] 2 Q. B. 287.

Stamp.

(*r*) Stamp, *ad valorem* on amount of rent reserved: see *ante*, p. 506.

administrators, and assigns, where the context so admits), of the other part: WITNESSETH that, in consideration of the rent and lessee's covenants hereinafter reserved and contained, the lessor hereby demises unto the lessee ALL THAT the sole and exclusive right (subject as hereinafter mentioned) of shooting, fowling, coursing, fishing, and sporting in, over, and upon the farms, closes, woods, coppices, and plantations, situate in the several parishes of —— and ——, in the county of ——, and particularly described in the schedule hereto, and containing altogether —— acres or thereabouts; AND ALSO all that keeper's cottage or lodge, and the kennels, offices, and outbuildings thereto belonging, situate at —— aforesaid, and now or late in the occupation of [*occupant*]: TO HOLD the premises unto the lessee from the —— day of ——, 19—, for the term of —— years, if the lessee shall so long live: paying therefor the yearly rent of £——, and so in proportion for a less period than a year, to be paid by two equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first payment to be made on the —— day of ——, 19—; AND the lessee hereby covenants with the lessor in manner following, that is to say: that the lessee will pay the said rent hereby reserved at the times and in manner hereinbefore mentioned; AND will also pay all rates for the time being payable in respect of all the premises hereby demised, and if the lessor shall at any time be required to pay any rate or rates in respect of any of the rights of sporting hereby demised (*s*), will repay to the lessor all sums which shall be paid by him in respect of any such rate or rates as last aforesaid, the same to be recoverable by the lessor as rent in arrear; AND ALSO that the lessee will exercise the said rights and privileges in a proper and sportsmanlike manner; AND will, during the said term, at his own cost, keep at least —— gamekeepers and —— assistants; AND will use his best endeavour to preserve a proper and sufficient head of game, and to protect the same, and the young and eggs thereof; AND will pay all expenses of and incident to such preservation and protection; AND ALSO will, during the said term, pay and satisfy all reasonable claims of the tenants or occupiers of the said lands mentioned in the schedule

Testatum.

Demise of right of sporting;

and keeper's cottage.

Habendum.

Reddendum.

Lessee's covenants:

to pay rent and rates;

to keep up the shooting, &c.;

preservation and protection;

to indemnify lessor against claims for damages to

(*s*) As to rating of sporting rights, see the Rating Act, 1874 (37 & 38 Vict. c. 54), s. 6, sub-s. (2); and see *Alton Urban Council* v. *Spicer*, [1904] 1 K. B. 678.

Rating of sporting rights.

XXVII. LEASE OF A RIGHT OF SHOOTING.

hereunder written, for compensation for damage or injury to the banks, hedges, or fences of the said lands, or for damage to the crops grown thereon, by reason of or incident to the exercise of the rights hereby demised by the lessee, or his friends or servants, or by game preserved by the lessee on the said lands (all such claims to be settled by arbitration in the usual manner); AND will keep the lessor well and sufficiently indemnified in respect of all such claims; AND that the lessee will not assign, underlet, or otherwise part with the possession of the premises hereby demised, or any of them, or any part thereof respectively, without the previous consent in writing of the lessor; AND ALSO that the lessee will, at the end or sooner determination of the said term, leave on the said lands a proper and sufficient head of game, and particularly not less than —— hen pheasants (*u*), and will deliver up to the lessor the said cottage, with the outbuildings and appurtenances thereof, in good and tenantable repair and condition: AND the lessor hereby covenants with the lessee that the lessee, paying the said rent hereby reserved, and observing and performing the covenants on his part herein contained, may peaceably enjoy the rights and liberties and all other the premises hereby demised, without any interruption or disturbance from or by the lessor, or any person or persons claiming under, through, or in trust for him; AND ALSO that the lessor will at all times during the said term, upon the request in writing of the lessee, bring and take all such actions and legal proceedings against trespassers and poachers as shall be reasonably required by the lessee upon being indemnified by the lessee against costs and expenses, and sign and cause to be served notices to trespassers to keep off the lands mentioned in the schedule hereunder written; AND ALSO that if this demise shall be determined by reason of the death of the lessee at any time between the 2nd day of February and the 1st day of September in any year of the said term, then he the lessor will repay or allow to the executors or administrators of the lessee all expenses incurred by the lessee as from the end of the pre-

fences and crops (*t*);

not to assign or underlet;

to deliver up at end of term;

Lessor's covenants: for quiet enjoyment;

to prevent trespass;

to allow proportion of expenses in case of lessee's death during term.

(*t*) The landlord is entitled under the Agricultural Holdings Act, 1908, s. 10 (4), to be indemnified by the shooting tenant against claims for compensation by the occupying tenants.

Covenant to leave land at end of term stocked with game.

(*u*) This covenant runs with the land, so that the assignees of the reversion can sue upon the covenant: see *Hooper* v. *Clarke*, L. R. 2 Q. B. 200; see also *Martyn* v. *Williams*, 1 H. & N. 817.

ceding season up to the death of the lessee of and incident to the preservation and protection and rearing of game on the lands aforesaid, the amount to be so repaid or allowed to be settled (in case of dispute) by arbitration in the usual manner: PROVIDED ALWAYS, that if any half-yearly payment of the said rent hereby reserved, or any part thereof, shall be unpaid by the space of —— days after the same shall have become due, whether the same shall have been formally or legally demanded or not, or if there shall be any breach by the lessee of any of the covenants on his part herein contained, then and in any such case the demise hereby made and the said term of —— years shall forthwith absolutely cease and determine.

XXVII. LEASE OF A RIGHT OF SHOOTING.

Proviso for cesser of term.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XXVIII. CONFIRMATION *of a* LEASE *assigned without* LICENCE *to the* ASSIGNEE *thereof.*

THIS INDENTURE (*x*), made, &c., BETWEEN [*lessor*], of, &c., of the one part, and [*assignee*], of, &c., of the other part. WHEREAS, by indenture, dated the —— day of ——, and made between, &c.: ALL, &c., with the appurtenances, were demised by the said [*lessor*], unto the said [*lessee*], from the —— day of ——, for the term of —— years, thence next ensuing, at the rent, and subject to the covenants and conditions therein respectively reserved and contained, including a covenant by the lessee not to assign the said premises without the consent first obtained of the lessor: AND WHEREAS, by an Indenture, dated, &c., and made, &c., the said [*lessee*] has assigned the same premises unto the said [*assignee*], for the residue of the said term of ——, but the consent of the said [*lessor*] to such assignment was not obtained: AND WHEREAS the said [*lessor*] has agreed to confirm the said lease unto the said [*assignee*]. NOW THIS INDENTURE WITNESSETH that, in consideration of the premises, the said [*lessor*] hereby confirms unto the said [*assignee*], the said indenture of lease, and the premises intended to be thereby demised as aforesaid, with the appurtenances, and all the said term, estate, and interest therein by the said lease granted as aforesaid; subject

Recital of lease.

Testatum.

(*x*) Stamp, 10*s*.

Stamp.

XXVIII. CONFIRMATION OF A LEASE ASSIGNED WITHOUT LICENCE.

nevertheless, to the reservations, covenants, conditions, and agreements, in the said indenture of lease contained, and on the part of the [*lessee*], his executors, administrators, and assigns, to be observed, performed, fulfilled, and kept; And the said [*assignee*] hereby covenants with the said [*lessor*], that he, the said [*assignee*], his executors or administrators, will from time to time, and at all times hereafter, during the residue of the said term of —— years, or which shall first happen, until he or they shall have assigned the said premises, with such consent as aforesaid, pay the said yearly rent by the said indenture of lease reserved, on the days, and in manner thereby appointed for payment thereof; And will observe and perform, all and singular the covenants and agreements, in the said indenture contained, and which on the part of the lessee are to be observed and performed (*y*).

Covenant by assignee to pay rent;

and observe covenants of lease.

In witness, &c.

XXIX. SURRENDER *of a* Lease *with a view to the* Granting *of a new* Lease, *by a* Tenant *for* Life *under a* Will: *by* Indorsement (*z*).

THIS INDENTURE (*a*), made the —— day of ——, 19—, Between the within named [*lessee*], of the one part, and [*tenant for life*], of, &c., of the other part: Whereas the within named [*lessor*], made and executed his will, dated, &c., and thereby gave and devised all his real estate whatsoever and wheresoever unto the said [*tenant for life*], for his life with divers remain-

Parties.

Recitals.

Will of lessor.

(*y*) A defeasance to revive the condition of re-entry is no longer necessary: see stat. 22 & 23 Vict. c. 35, s. 1.

(*z*) Where a surrender is intended to be made with a view to granting a new lease, a formal surrender is frequently dispensed with; and the new lease is expressed to be granted "in consideration of the surrender of a hitherto subsisting lease of the premises dated," &c. Sometimes, however, it is desired that there should be a formal surrender by a separate deed. As to the powers of limited owners to accept surrenders of leases, see the Settled Land Act, 1882, ss. 13 and 31 (iv.). Under these provisions an equitable tenant for life can accept a surrender so as to merge the term. "Acceptance of a surrender" is not mentioned in sect. 45, and, therefore, it would seem, notice to trustees under that section is not required.

(*a*) Stamp, 10*s.*: see schedule to the Stamp Act, 1891, *tit.* "Surrender."

ders over: And whereas the said [*lessor*] died on the —— day of ——, and his will (with a codicil thereto in nowise relating to his real estate) was duly proved in the Principal Probate Registry, on the —— day of ——, by [*executors*], the executors therein named (*b*): And whereas it has been agreed between the parties hereto that the said [*lessee*] shall surrender the premises demised to him by the within written indenture and that the said [*tenant for life*] shall, in exercise of his statutory powers as tenant for life of the settled lands devised by the said will, thereupon grant to him a new lease of the same premises for the further term of —— years: NOW THIS INDENTURE WITNESSETH that, in part performance of the said agreement, and in consideration of the premises the said [*lessee*] hereby assigns and surrenders unto the said [*tenant for life*] All the hereditaments and premises comprised in the within written indenture: To the intent that the term of —— years created by the within written indenture may merge and be extinguished in the freehold reversion and inheritance of the premises.

Death of lessor.

Agreement for surrender and new lease.

Witnesseth.

Surrender.

Parcels.

To merge in reversion.

In witness, &c.

SPECIAL INSTRUMENTS.

PRECEDENTS.

I. ASSENT *by an* Executor *to a* Bequest *of* Leaseholds (*c*).

KNOW ALL MEN BY THESE PRESENTS (*d*), that I [*executor*], of, &c., being the executor of the will of [*testator*],

Assent.

(*b*) If the testator died after the 31st December, 1897, add the following recital:—

"And whereas the said [*executors*] have assented to the devises in the said will contained as aforesaid."

See Land Transfer Act, 1897, s. 3 (1); and as to registered land, see L. T. R. 185.

(*c*) Although a testator bequeath his personal estate, either specifically or by way of residuary gift, yet the legal interest of the whole is vested in the executor by operation of law. However, in equity the executor takes

Assent necessary to complete legatee's title.

(*d*) Stamp, if by deed, 10*s.*; otherwise no stamp is required.

I. ASSENT BY EXECUTOR.

late of, &c., deceased, dated the —— day of ——, and proved on the —— day of ——, in the Principal Probate Registry, hereby declare that the funeral and testamentary expenses and debts of the said [*testator*] and all the specific and pecuniary legacies bequeathed by his said will, have to the best of my knowledge

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the personal estate as a trustee, in relation to the persons beneficially entitled. But nothing passes to the legatee, nor can a legatee take anything bequeathed to him, without the executor's assent, either express or implied: Co. Litt. 111a. The doctrine of assent applies to a residuary as well as to a specific bequest, and an executor may assent to part of a legacy without assenting to the whole: *Austin* v. *Beddoe*, 41 W. R. 619.

Effect of assent.

After assent, the legal title to a term of years bequeathed or in any specific legacy vests in the legatee: *Adams* v. *Pierce*, 3 P. Wms. 12; and the legatee may accordingly bring an action against the executor, or any other person, to recover its possession: *Doe* v. *Guy*, 3 East, 120.

Relation of assent.

The assent of an executor relates back to the testator's death: *Saunder's Case*, 5 Rep. 12b; and will confirm any intermediate dealings by the legatee with the subject-matter of the bequest: Toller, 311.

Assent may be given by one of several executors.

When there are two or more executors, the assent of any one or more is sufficient: *Holkirk* v. *Holkirk*, 4 Madd. 51; and in the case of the death of one of several executors, the power survives: *Flanders* v. *Clark*, 3 Atk. 508.

Assent before probate.

An executor may assent to or pay a legacy, or assign a term, or release an action or debt, before probate: *Graysbrook* v. *Fox*, Plowd. 281; *Wankford* v. *Wankford*, Salk. 306; *Middleton's case*, 5 Rep. 28a; *Hudson* v. *Hudson*, 1 Atk. 461; *Wills* v. *Rich*, 2 Atk. 285; *Rogers* v. *James*, 7 Taunt. 147.

Assent before debts are paid.

Executors should not assent to any specific legacy, whether of a term of years or of an estate *pur autre vie* devolving on them, or of chattels, until they are satisfied that the assets are sufficient to pay the testator's debts, without compelling the specific legatees to abate in proportion among themselves: *Duke of Devon* v. *Atkins*, 2 P. Wms. 383; Shep. Touch. 455.

What constitutes assent.

The assent of an executor to a legacy is only a perfecting act, for it is the will of the testator which gives the interest to the legatee, and therefore the law does not prescribe any particular form in which the assent is to be given. Thus, the assent may be either given by the executor in express terms, either in writing or by parol, or it may be inferred from any expression or act of the executor which shows his concurrence or agreement in the taking of the legacy: *Noell* v. *Robinson*, 1 Vern. 94; see *Wilson* v. *Rhodes*, 8 Ch. D. 777. It is, however, always advisable to have the assent in writing on account of the difficulty necessarily attending the proof of parol assent. But an assignment by the executor is not requisite: nor is it necessary that the assent should be given by deed: as an assent, a mere writing under hand is as effectual as a deed.

Stamp.

If the assent be given by deed, a stamp of 10*s*. will be required, otherwise no stamp is necessary. See further, as to assents of executors, Williams on Exors. (8th ed.) Vol. II., pp. 1108 *et seq*. As to what an executor can do before probate, see Williams, Vol. I., pp. 220 *et seq*.

and belief been fully paid or satisfied, and I hereby assent to the bequest made to A. B., of, &c., by the said will of ALL THAT the dwelling-house and garden, situate, &c., and comprised in an indenture of lease dated, &c., and made between [*lessor*], of, &c., of the one part, and [*lessee*], of, &c., of the other part, and thereby demised unto the said [*lessee*], his executors, administrators, and assigns, from the —— day of ——, for the term of —— years, at the yearly rent of £——, and subject to the covenants and conditions therein contained. 1. ASSENT BY EXECUTOR. Parcels.

IN WITNESS, &c.

II. CONVEYANCE *of* FREEHOLDS *by the* LEGAL PERSONAL REPRESENTATIVE *of a* TESTATOR *or* INTESTATE *to the* DEVISEE *or* HEIR-AT-LAW (*c*).

THIS INDENTURE (*d*), made the —— day of ——, BETWEEN [*personal representatives*], of, &c., of the one part, and [*devisee* or *heir*], of, &c., of the other part. Parties.

WHEREAS by his will dated, &c. [*testator*], after appointing the said [*personal representatives*] executors thereof, devised and bequeathed the freehold estate and premises hereby assured unto the said [*devisee*] absolutely. Recitals of will:

AND WHEREAS the said [*testator*] died on the —— day of ——, and his said will, together with a codicil, not affecting these presents, was duly proved by the said [*personal representatives*] on the —— day of —— in the Principal Probate Registry. of testator's death, and of probate;

AND WHEREAS the said [*personal representatives*] have paid the funeral and testamentary expenses and debts of the said [*testator*], other than debts of which they have had no notice [and the mortgage debts mentioned in the schedule hereto secured on the said freehold premises]. of payment of funeral and testamentary expenses, &c.

AND WHEREAS the said [*personal representatives*] have agreed to convey the said freehold premises unto the said [*devisee*], subject as hereinafter mentioned (*e*). Agreement to convey.

(*c*) See Conveyances on Sale, Preliminary Note, *ante*, p. 314.

(*d*) Stamp, 10*s*.

(*e*) In the case of intestacy, in lieu of the above recitals, insert the following:—

WHEREAS [*intestate*], of, &c., deceased, was at the time of his Seisin of intestate;

II. CONVEYANCE OF FREEHOLDS TO DEVISEE OR HEIR-AT-LAW.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the premises, the said [*personal representatives*], as personal representatives of the said [*testator* or *intestate*], hereby grant and release unto the said [*devisee* or *heir*], ALL THOSE pieces or parcels of land situate at —— [*describe parcels*] (*f*), TO HOLD the same unto and to the use of the said [*devisee* or *heir*] in fee simple, freed and discharged from the debts of the said [*testator* or *intestate*] [and the legacies bequeathed by his said will], but subject [to the principal sums and interest now owing on the security of the several indentures of mortgage mentioned in the schedule hereto, and] to a charge for all moneys (if any) which the personal representatives of the said [*testator* or *intestate*] are liable to pay (*g*).

IN WITNESS, &c.

THE SCHEDULE.

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death seised in fee simple of the freehold hereditaments hereby assured.

of death and grant of administration;

AND WHEREAS the said [*intestate*] died on the —— day of —— intestate, leaving the said [*heir*] his heir-at-law, and on the —— day of —— letters of administration of the real and personal estate of the said [*intestate*] were granted by the Principal Probate Registry to the said [*personal representatives*].

of payment of debts, &c.

AND WHEREAS the said [*personal representatives*] have paid the funeral expenses and the costs of the administration of the estate of the said [*intestate*], and all the debts of which they have had notice [except the moneys due on the mortgages specified in the schedule hereto], and have agreed to convey the said freehold hereditaments unto the said [*heir*], subject as hereinafter mentioned.

(*f*) In the case of an intestacy or general devise, say,

"All the real estate which on the death of the said [*intestate* or *testator*] devolved upon or became vested in the said [*personal representatives*], as his personal representatives, by virtue of the Land Transfer Act, 1897."

(*g*) See Land Transfer Act, 1897, s. 3 (1).

III. GRANT *of a* PERSONAL ANNUITY *for the* LIFE *of the* GRANTOR, *in which* TWO SURETIES *join; and* POWER *to* REPURCHASE.

III. GRANT OF ANNUITY AND COVENANT WITH TWO SURETIES.

THIS INDENTURE (*a*), made, &c., BETWEEN [*grantor*], of, &c. (hereinafter called "the grantor"), and [*surety*], of, &c., and [*other surety*], of, &c. (hereinafter called "the sureties"), of the one part, and [*grantee*], of, &c. (hereinafter called "the annuitant"), of the other part: WHEREAS the annuitant has contracted with the grantor for the purchase of an annuity or yearly sum of £—— to be paid to the annuitant, his executors, administrators, or assigns during the life of the grantor at the price of £——, subject to a power for the grantor and sureties, or any of them, to repurchase the said annuity upon such terms as are hereinafter mentioned. AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed that the same should be secured by these presents, and also by the bond of the grantor and sureties, who had agreed to join therein as sureties for the grantor, in securing the payment of the same annuity or yearly sum. AND WHEREAS, in pursuance of the said agreement, the grantor and sureties, by their bond in writing, bearing even date with these presents, have become jointly and severally bound unto the annuitant in the sum of [*double the purchase-money*]: With a condition thereunder written for making void the same, if the grantor and sureties, or any or one of them, or the heirs, executors, or administrators of them, or any or one of them, should pay to the annuitant, his executors, administrators, or assigns, during the life of him the grantor, one annuity or yearly sum of £——, clear of all deductions, by equal quarterly payments, on the —— day of ——, &c., the first payment to be made on the —— day of —— next ensuing the date of the said bond: [AND ALSO if the heirs, executors, or administrators of the grantor, or the sureties, or either of them, or the heirs, executors, or administrators of them, or either of them, should pay unto the annuitant, his executors, administrators, or assigns, in case the grantor should happen to depart this life on any day on which any quarterly payment of the said annuity should become due, the whole of such quarterly payment: AND if on any other day, a proportional part of the said annuity up to the day of the death

Parties.

Recital of contract for sale of annuity subject to power to repurchase; of bond for paying annuity (*b*).

(*a*) Stamp, *ad valorem* as on a conveyance on sale: see *ante*, p. 307.

(*b*) See Bonds, Precedent IX., *ante*, p. 184, and Precedent I., p. 172.

III. GRANT OF ANNUITY AND COVENANT WITH TWO SURETIES.

of the grantor.] NOW THIS INDENTURE WITNESSETH as follows:—

Testatum.

1. In further pursuance of the said agreement, and in consideration of the sum of £—— now paid by the annuitant to the grantor (the receipt whereof is hereby acknowledged), they the grantor and sureties do, and each and every of them doth, grant unto the annuitant, for the life of him the grantor, an annuity or yearly sum of £——, [To HOLD, receive, and take the same, henceforth, during the life of him the grantor,] to be paid to the annuitant by four equal quarterly payments, on the —— day of ——, &c., the first payment thereof to be made on the —— day of —— next, without any deduction, [Together with a proportional part of the said annuity for the time which shall elapse between the last of the said days of payment preceding the day of the decease of the grantor, to the day of such his decease,] as in the condition to the said bond is mentioned.

Grant of annuity by three to one.

Habendum (*h*).

Joint and several covenant to pay annuity from three to one.

2. And the grantor and sureties jointly and severally covenant with the annuitant that they the grantor and sureties, or some or one of them, or the heirs, executors, or administrators of them, or some or one of them, will pay unto the annuitant, during the life of the grantor, the said annuity or yearly sum of £——, on the days and times, and in manner aforesaid. AND the annuitant covenants with the grantor and sureties, and each and every of them, that in case the grantor and sureties, or any or one of them, or the heirs, executors, or administrators of either of them the sureties, should be desirous of repurchasing the said annuity; and of such intention should give —— months' notice in writing unto the annuitant, his executors, administrators, or assigns, then he the annuitant, his executors, administrators, or assigns, upon the expiration of the said —— months, for which such notice shall be so given as aforesaid, on receiving full payment of the said annuity, and all arrears thereof, up to and including the day of repurchasing the same, [Together with a proportional part of the same annuity in case such repurchase should be made on any day other than one of the said quarterly days of payment, for the time which shall have elapsed from the then last preceding quarterly day of payment, up to and including the day of such repurchase;] AND all and every sums and sum of money, if any, which shall

Power to repurchase, where there are two sureties.

(*h*) The *habendum*, though usually inserted in a grant of a personal annuity, is a formal and not a necessary part of the deed, and may be omitted.

be then due for or on account of any expenses occasioned by the non-payment thereof, will accept and take the sum of £——, in full for the repurchase of the said annuity; And the annuitant, his executors, administrators, or assigns, will or shall thereupon, at the cost of the person or persons requiring the same, release, or otherwise dispose of the same annuity, and all the securities for the same, as the person or persons making such repurchase shall in that behalf direct or appoint. But if such repurchase shall be made by the sureties, or either of them, or by the heirs, executors, or administrators of them, or either of them, the said annuity shall continue for the benefit of the person or persons who shall repurchase the same; And the same, and the several securities for the same, shall be assigned, or otherwise assured by the annuitant, his executors, administrators, or assigns, unto the person or persons repurchasing the same, or otherwise as he, she, or they shall direct or appoint; subject to the like right of the grantor to repurchase the same.

III. GRANT OF ANNUITY AND COVENANT WITH TWO SURETIES.

If repurchase made by sureties, annuity to continue for their benefit.

In witness, &c.

IV. CONVEYANCE *by* Trustees *for* Sale *of* Freeholds *to a* Beneficiary *absolutely entitled to* Proceeds *of* Sale, *who* Elects *to* Take *the* Property *as* Realty.

THIS INDENTURE (*i*), made the —— day of ——, Between [*trustee*], of, &c., and [*trustee*], of, &c., of the one part, and [*beneficiary*], of, &c., of the other part.

Parties.

Whereas [*testator*], late of, &c., by his will, dated, &c., after giving divers specific and pecuniary legacies as therein mentioned, gave, devised, and bequeathed all his real estate and all the residue of his personal estate whatsoever and wheresoever unto the said [*trustees*], their heirs, executors, administrators, and assigns, according to the nature and tenure of the same premises respectively upon trust to sell and convert the same into money and invest the proceeds of such sale and conversion, with power to vary investments as therein mentioned; And the said [*testator*] thereby declared that the trustees or trustee for the time being of his said will should stand possessed of the said proceeds of sale and conversion of his real and residuary personal estate after

Recitals: of devise of lands on trust for sale;

(*i*) Stamp, 10*s*. *Ad valorem* duty is not payable: see Finance (1909-10) Act, 1910, s. 74 (6).

IV. CONVEYANCE OF FREEHOLDS BY TRUSTEES FOR SALE TO BENEFICIARY.

payment thereout of his funeral and testamentary expenses and debts, and the pecuniary legacies bequeathed by his said will, upon trust to invest the same as therein mentioned, and should stand possessed of such investments and income thereof upon trust to pay the income thereof unto his son [*name*], since deceased, and his assigns during his life, and after his decease to pay and divide the capital of the said trust premises unto and among all and every the children or child of the said [*son*], who being sons or a son should attain the age of twenty-one years, or, being daughters or a daughter should attain that age or marry, and if more than one such child in equal shares, but if there should be but one such child then the whole to be in trust for such one child; AND the said [*testator*] thereby further declared that his said trustees or trustee should pay and apply the rents and profits of his real estates until sale thereof in like manner as was thereby directed concerning the income arising from the proceeds of such sale and conversion, and the investments thereof as aforesaid; AND he thereby appointed the said [*trustees*] to be the executors of his said will.

of death of testator and probate of will;

AND WHEREAS the said [*testator*] died on the —— day of ——, without having revoked or altered his said will, and the same was on the —— day of —— duly proved in the Principal Probate Registry by the said [*trustees*], the executors thereof.

of testator's seisin;

AND WHEREAS the said [*testator*] was at the time of his death seised of the messuage lands and hereditaments hereinafter described, and hereby assured for an estate in fee simple in possession, free from incumbrances.

of death of tenant for life, and state of family;

AND WHEREAS the said [*son*] died on the —— day of ——, leaving the said [*beneficiary*], who attained the age of twenty-one years on the —— day of ——, his only surviving child, and having had only one other child [*name*], who died an infant on the —— day of ——.

that no sale has taken place;

AND WHEREAS the funeral and testamentary expenses and debts of the said [*testator*], and the pecuniary legacies bequeathed by his said will have long since been paid and satisfied, but the said messuage lands and hereditaments hereby assured have not yet been sold and the rents and profits thereof have from time to time been received by the said [*son*] up to his death, and thereafter up to the date of these presents by the said [*beneficiary*] (as he the said [*beneficiary*] hereby acknowledges).

IV. CONVEYANCE OF FREEHOLDS BY TRUSTEES FOR SALE TO BENEFICIARY.

AND WHEREAS the said [*beneficiary*] is desirous of taking the said messuage lands and hereditaments hereby assured in their actual state as realty, and the said *trustees* have accordingly, at his request, agreed to convey the same to him in manner hereinafter appearing.

of agreement for conveyance of lands to beneficiary.

NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the premises, they the said *trustees* hereby, as trustees, grant and release unto the said *beneficiary* all and singular that and those the messuage *parcels*. TO HOLD the same premises unto and to the use of the said *beneficiary*, his heirs and assigns, absolutely, freed and discharged from the trusts, powers, and provisions declared and contained concerning the same by and in the hereinbefore recited will of the said [*testator*].

IN WITNESS, &c.

V. LICENCE *by* LANDOWNER *to* COMMITTEE *of* CRICKET CLUB *to erect* PAVILION, *and use* GROUND *for* CRICKET *and* LAWN TENNIS.

AN AGREEMENT (*k*), made this —— day of ——, 19—, BETWEEN [A. B.], of, &c. (hereinafter called "the licensor"), of the one part, and [C. D.], of, &c., [E. F.], of, &c., [G. H.], of, &c., members of the committee of the —— Cricket Club (hereinafter called "the committee"), of the other part: WITNESSETH as follows:—

Parties.

Testatum.

Licence to erect pavilion, and level cricket ground, &c.

1. The licensor hereby gives permission and licence to the committee with workmen and others from the —— day of —— next, to enter into and upon the close of the licensor known as —— field, situate, &c., and containing by estimation —— acres, and to lay down and level such portions and so much of the surface thereof as shall be suitable for the purpose of playing the games of cricket and lawn tennis, and to make suitable provision for fencing off so much of the ground so levelled as shall amount in the whole to not more than —— acres. AND also to erect in a suitable position in the said close a wooden building or pavilion for the purposes usually served by similar buildings.

Regulations as to user of ground.

2. The committee shall be entitled to use by themselves and by the members of the said cricket club, and by the friends and

(*k*) Stamp, 6*d*.

V. LICENCE TO CRICKET CLUB TO LEVEL FIELD, ERECT PAVILION, &c.

guests of such members, the whole of the said close except so much thereof as shall be used as a pen or pens under clause 3 hereof, for the purposes aforesaid, subject to the restrictions following, that is to say: [The close shall not be used in any way by the committee or by any member of the club upon Sundays, Christmas Day, or Good Friday:] The committee shall not keep or offer for sale or permit to be kept or offered for sale on the said close any malt or spirituous liquors or any other form of refreshment for the sale of which an excise or other licence is required: The committee shall not charge or allow to be taken any payment for admission to the said close other than the usual subscription of members without the express permission in writing of the licensor; And the licensor reserves to himself the right to use such parts of the said close as are not fenced off under the provision hereinafter contained in such manner as he shall think fit, whether for the feeding of cattle, sheep, horses, or other animals, or for any purpose whatsoever; And it shall be incumbent upon the committee from time to time to give to the licensor due notice of the days and hours when the said game of cricket is to be played, in order that the licensor or his servants may either remove from the said close any animals which may be thereon, or pen them into a remote part of the said close.

Committee may fence off portions of the cricket ground for a pen or pens.

3. It shall be lawful for the committee to erect a temporary and moveable fence of any suitable form and material round one or two portions of the levelled surface of the said close (such portion or portions not to contain altogether an area of more than —— acres), for the purpose of forming a pen or pens for keeping cattle, sheep and horses from such levelled surface, and the licensor shall not be liable for any damage whatsoever which may happen or be done to such levelled surface, whether fenced in or not, or to the fence or fences thereof.

Rent.

4. The committee shall pay to the licensor the annual sum of £—— payable in advance, in equal half-yearly payments on the —— day of —— and the —— day of ——, the first of such payments being made on the —— day of —— next, for every year or portion of a year during which the present licence shall continue.

Licence not to confer interest in land.

5. The present licence shall not be deemed to confer upon the committee or upon any member of the club any estate or interest in the said close or in the surface or soil thereof.

Power for

6. The licensor may revoke or determine the present licence at

any time, but, except in case of the breach by the committee or by any member of the said club of any of the stipulations herein contained, only upon giving one calendar month's notice in writing of his intention to revoke or determine the said licence, but, except in case of such breach as aforesaid, he hereby undertakes not to revoke or determine the said licence before the 30th day of September, 19—, or between the 25th day of March and the 30th day of September in any year.

V. LICENCE TO CRICKET CLUB TO LEVEL FIELD, ERECT PAVILION, &C.

licensor to determine licence.

As WITNESS, &c.

VI. ASSIGNMENT *of* LETTERS PATENT (*l*).

THIS INDENTURE (*m*), made the —— day of ——, 19—, BETWEEN [*patentee*], of, &c. (hereinafter called "the patentee"), of the one part, and [*assignee*], of, &c. (hereinafter called "the assignee"), of the other part: WHEREAS the patentee is the inventor and patentee of an invention for improvements in, &c. [*short title of invention*], the letters patent for which are dated the —— day of ——.

Recitals of title of patentee.

AND WHEREAS the patentee has agreed to sell to the assignee the said letters patent and the exclusive and absolute benefit thereof for the sum of £——. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the assignee to the patentee (the receipt whereof is hereby acknowledged), the patentee hereby, as beneficial owner (*n*), assigns and transfers unto the assignee ALL THAT the said invention of improvements in, &c. [*short title of invention*], and the said letters patent for the same, and the full and exclusive benefit thereof, and all right, powers, and benefits to the said invention, letters patent, and

Agreement for sale.

Testatum.

(*l*) See Patents and Designs Act, 1907 (amended by Patents, &c. Act, 1914), and the rules under the Act of 1907; Stat. Rules and Orders, 1907, No. 950; and Patent Rules, 1908. The deed should be registered under the Act: sects. 22 and 71 of the 1907 Act.

(*m*) Stamp, *ad valorem* as on a conveyance on sale: see Conveyances, Preliminary Note, *ante*, p. 307. If the purchase-money is under 500*l*., the statement as to value (see Conveyances, Precedent I., *ante*, p. 317) should be added to the deed.

(*n*) This implies the usual covenants for title, but an express covenant for the validity of the letters patent and further assurance of the same should be inserted.

VI. ASSIGNMENT OF LETTERS PATENT.

premises belonging, To HOLD the same unto the assignee for the residue of the term of fourteen years granted by the said letters patent, and any further term to be granted by any extension or renewal of the same; AND the patentee hereby covenants with the assignee that, notwithstanding anything by the patentee done, omitted, or knowingly suffered, the said letters patent are now valid and subsisting, and the patentee now has power to assign the same in manner aforesaid; AND that the same shall be held, used, and enjoyed by the assignee without any interruption or disturbance, free from incumbrances; AND that the patentee and all persons claiming under or in trust for him will, at all times, at the cost of the assignee, execute and do all such assurances and acts as may be reasonably required for further assuring the said letters patent and premises to the assignee for the residue of the said term.

IN WITNESS, &c.

VII. DEED *of* COVENANT *securing* ANNUITY *by way of* WEEKLY PAYMENTS *to a* PAST MISTRESS (*o*).

THIS INDENTURE (*p*), made the —— day of ——, 19—, BETWEEN [*covenantor*], of, &c., of the first part; [*mistress*], of, &c., of the second part; and [*trustee*], of, &c., and [*trustee*], of, &c., of the third part.

WHEREAS the said [*covenantor*] has for some time past been on terms of intimacy with the said [*mistress*], but such intimacy has now ceased.

AND WHEREAS the said [*covenantor*] has agreed to make such provision for the said [*mistress*] and otherwise as hereinafter expressed.

NOW THIS INDENTURE WITNESSETH as follows:—

Covenant to pay weekly sum.

1. In pursuance of the said agreement, and in consideration of the premises, the said [*covenantor*] hereby covenants with the said [*trustees*] to pay to them, or the survivor of them, or other the trustees or trustee for the time being hereof (hereinafter called "the trustees"), during the life of the said [*mistress*], the

(*o*) For the law on this subject, see Pollock on Contracts, 6th ed. pp. 288 *et seq.*

(*p*) Stamp, *ad valorem* as on a bond to secure an annuity of like amount: see Bonds, Preliminary Note, *ante*, p. 169.

VII. DEED OF COVENANT SECURING ANNUITY TO PAST MISTRESS.

weekly sum of £——, the first payment to be made at the end of one week from the date hereof.

Trust of weekly sum.

2. The said weekly sum shall be held by the trustees upon trust, to pay the same to the said [*mistress*] until some act or event shall be done or occur whereby the same weekly sum, or any part thereof, would, if belonging absolutely to her, become vested or charged in or in favour of some other person or persons, whereupon the said [*mistress*] shall forfeit the said weekly sum, and thenceforth the trustees shall pay or apply the same to or for the maintenance or personal support or benefit of all or any one or more exclusively of the other or others of the said [*mistress*] and her lawful issue (whether minors or adult) for the time being in existence, in such shares and manner as the trustees in their absolute discretion think fit.

Events on which annuity to cease.

3. The said weekly sum shall absolutely cease to be payable:—

(1) If at any time after forfeiture thereof by the said [*mistress*] there shall be no lawful issue of the said [*mistress*] living.

(2) If the said [*mistress*] shall at any time molest or annoy the said [*covenantor*] by any act or proceeding, or shall communicate or attempt to communicate with the said [*covenantor*], or his wife or intended wife for the time being, or any of the relatives or friends of the said [*covenantor*], or his wife or intended wife, either personally or by letter otherwise than through the trustees, who alone are authorised to act as intermediaries for that purpose; or if the said [*mistress*] shall call herself by the name of the said [*covenantor*], or represent herself to be his wife, or come to reside within —— miles of —— House or any other residence for the time being of the said [*covenantor*].

Arbitration clause.

4. If any dispute or question shall arise as to whether any act or proceeding or communication on the part of the said [*mistress*] constitutes a breach of the provision contained in sub-clause (2) of clause 3 hereof, or as to the rights of the said [*mistress*] hereunder, the same shall be referred to the decision of two arbitrators, or an umpire, whose decision shall bind all parties, and this shall be deemed to be submission to arbitration within the Arbitration Act, 1889, or any statutory provision for the time being in force with regard to arbitrations.

Annuity to cease if equivalent provision made by will.

5. If the said [*covenantor*] shall by will bequeath to the said [*mistress*], during her life, an annuity or other periodical payment equivalent to or exceeding in amount the weekly payment hereby

VII. DEED OF COVENANT SECURING ANNUITY TO PAST MISTRESS.

provided, then the annuity or periodical payment so bequeathed shall be in satisfaction of the sum hereby covenanted to be paid, which shall as from the death of the said [*covenantor*] cease to be payable.

Power to appoint new trustees.

6. The statutory power of appointing a new trustee or new trustees hereof shall be vested in the said [*covenantor*], his executors or administrators.

IN WITNESS, &c.

VIII. ENLARGEMENT *of a* TERM *of* YEARS *by absolute* LEGAL *and* BENEFICIAL OWNER, *by* INDORSEMENT *on the* CONVEYANCE *to him of the* LEASEHOLDS (*q*).

Declaration of enlargement.

KNOW ALL MEN BY THESE PRESENTS (*r*), that the within named [*owner*], as the person beneficially entitled in right of the within mentioned term of five hundred years, to the possession or receipt of the rents and profits of the lands comprised in the said term, and by virtue of the powers of the Conveyancing Acts, 1881 and 1882, hereby declares that from and after the execution of these presents, the residue of the said term of five hundred years shall be, and the same is hereby enlarged into a fee simple.

IN WITNESS, &c.

(*q*) See the Conveyancing Act, 1881, s. 65, as amended by the Conveyancing Act, 1882, s. 11, as to what terms can be enlarged and who can enlarge them and the effect of so doing. As to what is meant by "rent having no money value," see *Re Chapman and Hobbs*, 29 Ch. D. 1007; *Smith* v. *Stott*, reported in a note to that case; and *Blaiberg* v. *Keeves*, [1906] 2 Ch. 175. This form can easily be adapted where the enlargement is made by a trustee, or personal representative, or a tenant for life. In the case of a married woman who was married or acquired her beneficial interest in the term before 1882, the concurrence of her husband is required: see C. A. 1881, s. 65 (2) (i.). See further, as to enlargement of long terms, Wolstenholme, Conveyancing, &c. Act, 10th ed. pp. 135—139. In the case of registered land the register should be amended.

(*r*) Stamp, 10*s*., this being a "deed" not described in the schedule to the Stamp Act, 1891: see *sub tit.* "Deed."

IX. CONVEYANCE. IX. CONVEYANCE *of* FREEHOLDS *and* DECLARATION *of* TRUST *of* COPYHOLDS *and* LEASEHOLDS *vested in* TRUSTEES *by way of* SECURITY *which have become* DISCHARGED *from the* RIGHT *of* REDEMPTION *under a* FORECLOSURE ORDER *or the* STATUTES *of* LIMITATION *where the* MONEY *was* ADVANCED *out of* CAPITAL MONEYS *under a* STRICT SETTLEMENT *of* REALTY (*a*).

IX. CONVEYANCE OF FREEHOLDS, &C.

THIS INDENTURE (*b*), made the —— day of ——, 19—, BETWEEN [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the first part; [*tenant for life*], of, &c., of the second part; and [*grantee to uses*], of, &c., of the third part. Parties (*c*).

WHEREAS under an indenture of settlement, dated the —— day of ——, and made between [*parties*], certain freehold hereditaments stand limited and settled to uses under which the said [*tenant for life*] is tenant for life in possession, and the trustees Recitals: of settlement;

(*a*) Stamp, 10*s*.

(*b*) Sect. 9, sub-sect. (1) of the Conveyancing Act, 1911, enacts that where any property vested in trustees by way of security becomes by virtue of the Statutes of Limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale with power to postpone such sale as they may think proper; and by sub-sect. (2), the net proceeds of sale are to be applied in like manner as the mortgage debt would have been applicable. Sub-sect. (4) provides that where the mortgage money is capital money for the purposes of the S. L. Acts, 1882—1890, the trustees shall, if the tenant for life so requires, instead of selling, make such conveyance or execute such declaration of trust of the land as would be required under sect. 24 of the S. L. Act, 1882, if the land had been acquired by purchase as mentioned in that section. This precedent is intended to meet the case referred to in sub-sect. (4) of sect. 9 of the C. A. 1911. In the case of freeholds, where the legal estate is in the trustees, and in the case of copyholds and leaseholds a declaration of trust appears to be the proper form to adopt; but for freeholds, where the limitations of settlement are legal, a conveyance will be necessary. The object of this precedent is to combine both a conveyance and declaration of trust in one deed under the circumstances recited. It can be easily adapted to meet other cases which may arise.

(*c*) Where the circumstances do not require a conveyance, but only a declaration of trust, there will be no grantee to uses, and the parties will be the trustees of the one part and the tenant for life of the other part.

IX. CONVEYANCE OF FREEHOLDS, &C.

are the present trustees thereof and also trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890; AND the said settlement contained various trusts, powers, and provisions, and amongst others, a power for the trustees thereof to invest capital moneys in their hands arising under the powers thereby conferred upon freehold, copyhold, leasehold, or chattel real securities (*d*) in Great Britain [such leaseholds or chattels real having not less than —— years to run at the time of the investment being made].

of mortgage.

AND WHEREAS by an indenture of mortgage, dated the —— day of ——, and made between [*parties*], in consideration of the sum of £—— paid by the trustees to the said [*mortgagor*], the freehold hereditaments hereby assured were granted by the said [*mortagor*] unto and to the use of the trustees, their heirs and assigns, and the leasehold hereditaments comprised in the indenture of lease hereinafter mentioned were assigned [demised] by the said [*mortgagor*] unto the trustees for the residue of the term of years granted by the said indenture of lease [except the last day thereof], subject, as to the said freehold and leasehold hereditaments, to a proviso for redemption thereof, on payment to the trustees, their executors, administrators, or assigns, of the sum of £——, with interest thereon, at the rate therein mentioned [AND it was thereby agreed that the said [*mortgagor*] should thenceforth stand possessed of the nominal reversion thereby reserved of the said term of years in trust for the trustees, subject to such equity of redemption as aforesaid] [AND the said [*mortgagor*] thereby irrevocably appointed the trustees, and each of them, the attorneys and attorney of him the said [*mortgagor*] to assign the same reversion to the trustees, or as they should think fit, subject to the equity of redemption (if any) for the time being subsisting as aforesaid]: AND by the same indenture the said [*mortgagor*] covenanted with the trustees to surrender the copyhold hereditaments, the trusts whereof are hereinafter declared, to the use of the trustees, their heirs and assigns, according to the custom of the manor of ——, in the county of ——, subject to a condition for making void the same surrender corresponding with the proviso for redemption thereinbefore contained as aforesaid.

(*d*) The trustees could not invest in leaseholds without express authority to do so.

AND WHEREAS the said sum of £—— so paid by the trustees to the said [*mortgagor*] as aforesaid, was paid by them out of capital moneys in their hands arising under the powers of the said settlement.

Money advanced out of capital money under settlement.

[AND WHEREAS by writing under their hands dated the —— day of ——, 19—, the trustees required the said [*mortgagor*] to assign to them the last day of the said term of —— years by the said indenture of mortgage reserved as aforesaid, subject to the equity of redemption then subsisting therein, but no such assignment had been made at the date of the order hereinafter recited.]

Request for assignment of nominal reversion (*e*).

AND WHEREAS on the —— day of —— the hereditaments by the said indenture of mortgage covenanted to be surrendered were pursuant to the said covenant in that behalf surrendered into the hands of the lord of the said manor of —— to the use of the trustees; AND on the —— day of —— the trustees were admitted thereto, subject to such equity of redemption as was then subsisting therein.

Surrender of copyholds and admission of trustees.

AND WHEREAS by an order of the Chancery Division of the High Court of Justice, made by Mr. Justice —— on the —— day of ——, in an action intituled, &c., in which the trustees were plaintiffs and the said [*mortgagor*] was defendant, it was ordered that the said [*mortgagor*] should thenceforth be absolutely foreclosed from all equity of redemption in the said mortgaged hereditaments, [and by the same order it was ordered that the last day of the said term of —— years in the said leasehold hereditaments by the said indenture of mortgage reserved as aforesaid should vest in the trustees].

Order for foreclosure.

[AND WHEREAS by an indenture dated the —— day of ——, and expressed to be made between the said [*mortgagor*], of the one part, and the trustees of the other part, the said [*mortgagor*], by the trustees acting as his attorneys under the power in that behalf in the said indenture of mortgage contained as aforesaid, assigned

Assignment to trustees of nominal reversion (*f*).

(*e*) If the mortgage contained a power of attorney to assign the nominal reversion and such power has been exercised, this recital must be omitted.

(*f*) This recital will be inserted if the mortgage deed contains a power of attorney and it is acted on; and in that case the words in brackets in the preceding recital will be omitted, as the vesting order would not then be required.

IX. CONVEYANCE OF FREEHOLDS, &C.

the said leasehold hereditaments unto the trustees for all the residue then unexpired of the said term of —— years.]

Request of tenant for life for the execution of conveyance, and declaration of trust.

AND WHEREAS the said [*tenant for life*] has required the trustees instead of selling the said freehold, leasehold, and copyhold hereditaments vested in them, discharged from the right of redemption by virtue of the said order for foreclosure, to make such conveyance and execute such declaration of trust thereof as are hereinafter contained.

NOW THIS INDENTURE WITNESSETH as follows:—

Conveyance of freeholds.

1. In consideration of the premises and in pursuance of the statutory provisions in that behalf the trustees, as such trustees as aforesaid, at the request of the said [*tenant for life*], hereby grant and convey unto the [*grantee to uses*] all and singular the messuages, lands, tenements, and hereditaments described in the first schedule hereto, and all other (if any) the freehold hereditaments now absolutely vested in the trustees under the said indenture of mortgage and by virtue of the said order, TO HOLD the same unto the said [*grantee to uses*] and his heirs to the uses and subject to the trusts, powers, and provisions which, under the said settlement or by virtue of the exercise of any power of charging therein contained, are now subsisting with respect to the freehold land and hereditaments comprised in and now subject to the said settlement, but not so as to increase or multiply charges or powers of charging.

Declaration of trust of copyholds.

2. In consideration of the premises and in pursuance of the statutory provisions in that behalf the trustees, at the request of the said [*tenant for life*], hereby declare that they the trustees, their heirs and assigns, shall henceforth stand seised of all and singular the copyhold hereditaments described in the second schedule hereto, and all other (if any) the copyhold hereditaments now absolutely vested in the trustees under the said indenture of mortgage and by virtue of the said order upon such trusts and subject to such powers and provisions as shall correspond with the uses, trusts, powers, and provisions by and in the said settlement declared and contained concerning the freehold hereditaments thereby settled, or as near thereto as the different tenure of the property and circumstances will permit, but so as not to increase or multiply charges or powers of charging.

Declaration of trust of leaseholds.

3. In consideration of the premises and in pursuance of the statutory provisions in that behalf the trustees, at the request of

the said [*tenant for life*], hereby declare that the trustees, their executors, administrators, and assigns, shall henceforth stand possessed of all and singular the leasehold hereditaments described in the third schedule hereto, and all other (if any) the leasehold premises comprised in and demised by an indenture of lease dated the —— day of ——, and made between [*parties*], for all the residue now unexpired of the term of —— years therein by the said indenture of lease granted upon such trusts and with and subject to such powers and provisions as are by and in the said settlement declared and contained concerning the freehold hereditaments thereby settled, or as near thereto as the nature of the premises and circumstances will permit, but so as not to increase or multiply charges or powers of charging, and so that the beneficial interest in said leasehold premises shall not vest absolutely in any person who is by the settlement made by purchase tenant in tail or in tail male or in tail female, and who dies under the age of twenty-one years, but shall on the death of such person under that age go as the freehold land comprised in and subject to the said settlement would go.

Covenant against incumbrances.

4. Each of them the trustees, so far as relates to his own acts and omissions only, doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*tenant for life*], his heirs and assigns, and to the intent that this covenant shall enure for the benefit of each person who takes as a purchaser under the said settlement, and all persons claiming under him, that they the said covenanting parties respectively have not done or knowingly omitted or suffered, or been party or privy to anything whereby the said copyhold and leasehold premises hereby assured respectively, or any part thereof respectively, are, is, or may be in any way incumbered or affected, or whereby they the covenanting parties respectively are in anywise prevented from assuring the same premises respectively, or any part thereof, in manner aforesaid.

In witness, &c.

The First Schedule above referred to.

The Second Schedule above referred to.

The Third Schedule above referred to.

APPENDIX.

FORMS OF EXPRESS COVENANTS OF TITLE *to be used in cases where it is not thought desirable to rely on the statutory implied covenants.*

Freeholds A.—Where the vendor himself purchased the property:—

Covenants: for right to convey; for quiet enjoyment; free from incumbrances; and for further assurance.

"AND the vendor hereby covenants with the purchaser that, notwithstanding anything by him, the vendor, done, omitted, or knowingly suffered, he the vendor now has power to convey (*a*) the premises hereby conveyed (*a*) in manner aforesaid: AND that the same premises, and every part thereof, shall remain and be to the use of the purchaser, his heirs and assigns, and be quietly entered upon and held and enjoyed, and the rents and profits thereof received accordingly, without any interruption or disturbance by him the vendor, or any person claiming through or in trust for him; AND that discharged from, or otherwise by him the vendor, his heirs, executors, or administrators, indemnified against all estates, incumbrances, claims, and demands, created or made by him, or any person claiming through or in trust for him: AND FURTHER, that he the vendor, and any person having or claiming any estate, or right, or interest in the premises, or any part thereof, through or in trust for him, will, at all times, at the cost of the person or persons requiring the same, execute and do every such assurance and thing for the further or more effectually assuring the premises, or any part thereof, to the use of the purchaser, his heirs and assigns, in manner aforesaid, as by him or them shall reasonably be required."

Freeholds B.—Where the vendor acquired the property by descent or devise:—

Covenants: for right to convey;

"AND the vendor hereby covenants with the purchaser that notwithstanding anything by him the vendor, or any of his ancestors or testators, made, done, omitted, or knowingly suffered,

(*a*) Where the covenants for title are used in a deed of covenant to surrender copyholds, instead of "convey" and "conveyed," say, "covenant to surrender" and "covenanted to be surrendered."

he the vendor now has full power to convey (*a*) the premises hereby conveyed (*a*) in manner aforesaid: And that the premises hereby conveyed (*a*), and every part thereof, shall remain and be to the use of the purchaser, his heirs and assigns, and be quietly entered upon and held and enjoyed, and the rents and profits thereof received accordingly, without any interruption or disturbance by him the vendor, or any person claiming under or in trust for him, or any of his ancestors or testators: And that, free and discharged from or otherwise by him the vendor, his heirs, executors, or administrators, sufficiently indemnified against all estates, incumbrances, claims, and demands, created or made by him the vendor, or any of his ancestors or testators, or any person lawfully or equitably claiming under or in trust for him or them or any of them: And further, that he the vendor, and every person having or claiming any estate, right, or interest in the premises hereby conveyed, or any part thereof, through or in trust for him the vendor, or any of the ancestors or testators of the vendor, will at all times hereafter," &c. [*Continue covenant for further assurance,* ut ante, *p.* 662].

for quiet enjoyment;

free from incumbrances;

and for further assurance.

Freeholds C.—By joint tenants or tenants in common:—

"And each of them the said [*vendors*] in respect only of [*if joint tenants*] 'one equal —— share of the hereditaments hereby assured,' or [*if tenants in common*] 'the share or interest of or in the hereditaments hereby assured to which the covenanting party [or his wife] claims to be entitled or to have power to appoint or dispose of as aforesaid,' and only in respect of the acts and defaults of himself or herself [and of his or her ancestors or testators], and of persons claiming under or in trust for him or her [or them respectively] [and in the case of the said —— in respect of the acts and defaults of the said ——, his wife, and of persons claiming under her], but not further or otherwise, doth hereby for himself or herself, his or her heirs, executors, and administrators, covenant with the purchaser, his heirs and assigns, that notwithstanding anything by them the said covenantors [or any of their ancestors or testators], or any person claiming under or in trust for them, or any of them, done, omitted, or knowingly suffered, they the covenantors respectively now have power to convey (*a*) the premises hereby assured; And that the same premises, and every part

(*a*) See note, last page.

thereof, shall remain and be to the use of the purchaser, his heirs and assigns, and be quietly entered upon and held and enjoyed, and the rents and profits thereof received accordingly, without any interruption or disturbance by the covenantors, or any of them, or any person claiming under or in trust for them [or any of their ancestors or testators]; AND that free and discharged from or otherwise by the covenantors, or their respective heirs, executors, or administrators, indemnified against all estates and incumbrances, claims, and demands, created or made by them, or any of them [or any of their ancestors or testators], or any person claiming through or in trust for them, or any of them: AND FURTHER, that they the covenantors respectively, and every person having or claiming any estate, right, or interest in the premises, or any part thereof, through or in trust for them, or any of them, [or the ancestors or testators of them, or any of them,] will at all times, at the cost of the person or persons requiring the same, execute and do every such assurance and thing for the further or more effectually assuring the premises, or any part thereof, to the use of the purchaser, his heirs and assigns, as by him or them shall be reasonably required.

TRANSFER OF LAND UNDER THE LAND TRANSFER ACTS AND RULES.

I. INSTRUMENT *of* TRANSFER *of* LAND. VARIATIONS *for* TRANSFERS (1) *of* PART *of the* LAND *on the* TITLE; (2) *before* REGISTRATION; *and* (3) *of* LEASEHOLDS (*a*).

LAND REGISTRY.

Land Transfer Acts, 1875 and 1897.

District ——.
Parish ——.
No. of Title ——.

[*Date.*] In consideration of —— pounds [£——], paid by [*purchaser*], of, &c., to me (the receipt whereof I hereby acknow-

---

Variations.

(*a*) This form is Form 20 of L. T. R., First Schedule, with the receipt and the words "as beneficial owner" and "in fee simple" added. If

ledge), I [*vendor*], of, &c. [as beneficial owner], hereby transfer to [*purchaser*], of, &c. [in fee simple], the land comprised in the title above referred to.

Sealed, signed, and delivered by the said [*vendor*] in the presence of [*witness*], of ——. } *Signature of Vendor.* (SEAL.)

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part only of the land comprised in the title is transferred, the transfer will be of—

"the land shown and edged red on the accompanying plan, and known as —— [and described in the schedule hereto], being part of the land comprised in the title above referred to."

In the case of leasehold, substitute for "in fee simple"—

"for the residue of the term granted by the registered lease."

If the land has not been previously registered, describe it as—

"the land granted [*or*, 'demised'] by an indenture dated, &c."

If no plan accompanies the deed the reference may be to "the general map": see L. T. R. 1907. For a transfer of land to a company or corporation sole or aggregate, see Form 36 in First Schedule to L. T. R.; and see L. T. R. 144.

L. T. R. 99 provides that for the purpose of introducing the implied covenants under the C. A. 1881, a person may, in a registered disposition, be expressed to execute, transfer, or charge as beneficial owner, as settlor, &c., but no reference to such implied covenants shall be entered in the register. Sect. 16 (3) of the L. T. Act, 1897, enacts that in the absence of special stipulation a vendor of land, if registered with an absolute title, cannot be required to enter into any covenant for title; and if registered with a possessory or qualified title, shall only be required to covenant against estates and interests excluded from the effect of registration (see L. T. Act, 1875, ss. 8 and 9); and that "the implied covenants for title under sect. 7 of the C. A. 1881, shall be construed accordingly." It is not clear what is meant by these last words, and therefore where it is intended that the implied covenants shall not be restricted or qualified by sect. 16 (3) of the L. T. Act, 1897, a recital and declaration to that effect, as in Form III., should be added to the instrument of transfer.

II. INSTRUMENT OF TRANSFER.

II. INSTRUMENT *of* TRANSFER *of* PART *of the* LAND *comprised in a* TITLE, *with a* GRANT *or* RESERVATION *of an* EASEMENT.

[*Heading as in Precedent I.*]

[*Date.*] In consideration of —— pounds [£——], paid to me by [*purchaser*], of, &c. (the receipt whereof I hereby acknowledge), I [*vendor*], of, &c., being seised in fee simple of the land comprised in the title above referred to for my own benefit, hereby [as beneficial owner] transfer to the said [*purchaser*] the land shown and edged with red in the accompanying plan, and described in the schedule hereto (being part of the land comprised in the title above referred to), together with [*or,* "reserving to myself, my heirs and assigns"] full right and liberty at all times hereafter, &c. [*describe the easement*]: AND I, the said [*purchaser*], with the consent of the said [*vendor*] [*or if the easement is reserved,* "I, the said [*vendor*], with the consent of the said [*purchaser*]], hereby apply for an entry of the said right of —— as appurtenant to the land hereby transferred [*or,* "to the land comprised in the said title retained by the said [*vendor*]"].

Sealed, signed, and delivered, &c.

III. INSTRUMENT *of* TRANSFER, *with* PERMISSIBLE ADDITIONS.

[*Heading, date, consideration, and receipt as in Precedent I.*] I [*vendor*], of, &c., as beneficial owner, hereby transfer to [*purchaser*], of, &c., in fee simple [subject to the leases and tenancies mentioned in the first schedule hereto] the land comprised in the title above referred to [subject to the reservations and exceptions specified in the —— schedule hereto, and with the benefit of the easements and rights mentioned in the —— schedule hereto, and subject to and with the benefit of the restrictive conditions (*b*) set forth in the —— schedule hereto] [subject to the leases men-

(*b*) As to restrictive conditions, see sect. 84 of the L. T. A. 1875 (amended by Sched. 1, 1897 Act), s. 223; *Willé* v. *St. John,* [1910] 1 Ch. 84, 325.

tioned in the charges register]: And the said [*vendor*] and [*purchaser*] hereby apply to the Registrar to enter on the register such of the said reservations (*c*), exceptions, easements, rights, and conditions as are capable of registration, and hereby apply for the provisional registration of the said [*purchaser*] for the period of thirty days (*d*).

And whereas upon the treaty for sale it was stipulated that the said [*vendor*] should convey as beneficial owner, and that the covenants to be implied by his so conveying should be such as by sect. 7 of the Conveyancing Act, 1881, are to be deemed to be included and implied by virtue of his so conveying without any qualification or restriction: Now, in pursuance of such agreement, it is hereby declared that notwithstanding anything in sect. 16 of the Land Transfer Act, 1897, contained the covenants for title hereby implied by reason of the said [*vendor*] being expressed to transfer as beneficial owner shall be such covenants as are to be thereby implied under sect. 7 of the Conveyancing Act, 1881, to the intent that such covenants shall be construed and take effect in like manner in all respects as if this were a conveyance of unregistered land.

Sealed, signed, and delivered, &c.

(*see Precedent I.*).

IV. INSTRUMENT *of* Transfer *of* Part *of* Registered Leasehold Land *at* Apportioned Rent.

[*Heading as in Precedent I.*]

[*Date.*] In consideration of —— pounds [£——], paid to me by [*purchaser*], of, &c. (the receipt whereof I hereby acknowledge), I [*vendor*], of, &c., hereby transfer to the said [*purchaser*] the land shown and edged with red on the accompanying plan, and described in the schedule hereto (being part of the land comprised in the title above referred to), for the residue of the term granted by the registered lease: And it is hereby agreed between the said [*vendor*] and [*purchaser*] that the rent of £—— reserved by the said lease

(*c*) If the reservations are already entered the application will as regards them be unnecessary.

(*d*) See L. T. R. 157, as amended by the L. T. R. 1907.

IV. INSTRUMENT OF TRANSFER.

shall henceforth be apportioned between the land hereby transferred and the remainder of the land in the said title as follows: namely, £—— to the part transferred to the said [*purchaser*], and £—— to the remainder: And the said [*vendor*] and [*purchaser*] hereby apply to the Registrar to make a note of such apportionment: And the said [*purchaser*], as beneficial owner, hereby charges the land edged with red with the payment to the said [*vendor*], his executors, administrators, and assigns, of all money which may become payable to him or them under the covenants by the said [*purchaser*] hereby implied (*e*).

[*Add power of re-entry restricted within legal limits, Precedent XI.*, ante, *p.* 333.]

And the said [*purchaser*] hereby applies to the Registrar to make a note of the said power of re-entry.

Sealed, signed, and delivered, &c.
(*see Precedent I.*) (*f*).

V. INSTRUMENT *of* Transfer *on* Sub-Sale.

[*Heading as in Precedent I.*]

[*Date.*] In consideration of —— pounds [£——], of which —— pounds [£——] is paid to [*original vendor*], of, &c., and —— pounds [£——] is paid to [*original purchaser*], of, &c., I [*original vendor*], at the request of the said [*original purchaser*], hereby

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(*e*) As to the covenants implied on a transfer of part of the land held under a lease, see L. T. Act, 1875, s. 39; L. T. R. 139.

(*f*) This transfer must be executed in duplicate, and the following charge will be entered against the vendor's title:—

[*Heading as in Precedent I.*]

[*Date.*] I [*vendor*], of, &c., charge the land retained by me under the above title with the payment to [*purchaser*], of, &c., his executors, administrators, or assigns, of all moneys which may become payable to him or them under the covenants by me implied in an instrument of transfer dated the —— day of —— of part of the land comprised in the said title.

transfer to [*sub-purchaser*], of, &c., the land comprised in the title above referred to (*g*).

Sealed, &c. (*see Precedent I.*).

VI. INSTRUMENT *of* TRANSFER *of* FREEHOLDS *purchased with* CAPITAL MONEY *under a* SETTLEMENT (*h*), *with* VARIATION *in notes for* LEASEHOLDS.

[*Heading as in Precedent I.*]

[*Date.*] In consideration of —— pounds [£——] paid out of capital money arising under a settlement dated, &c., under which A. B., of, &c., is [has the power of a] tenant for life under the Settled Land Acts, 1882 to 1890, and C. D., of, &c., and E. F., of, &c., are the trustees of the said settlement, I [*vendor*], of, &c., hereby transfer to the said A. B. in fee simple the land comprised in the title above referred to, To HOLD to the uses, upon the trusts and with and subject to the powers and provisions to, upon, with, and subject to which the same ought to be held by reason of the same having been purchased with capital money arising as aforesaid: AND I the said A. B. hereby apply for the entry on the register of the following restriction (*i*): Except under an order of the Registrar, no transfer is to be registered unless made on sale, the purchase-moneys being paid to C. D., of, &c., and E. F., of, &c., or into Court; no charge is to be registered except under an order of the Registrar.

Sealed, signed, and delivered, &c. (*k*).

(*g*) See *ante*, p. 664, note (*a*), as to variations where part only of the land comprised in the title is transferred, and for the case of leaseholds, and where the land has not been previously registered.

(*h*) This form is practically the same as Form 25, L. T. R., First Schedule, with an alteration of the habendum.

(*i*) The restriction here inserted is in Form 6 in Schedule 1 of L. T. R. The fuller Form 7 may be used if appropriate.

(*k*) The transfer must be executed by the vendor, the tenant for life, and the trustees. In the case of leaseholds purchased with capital money this precedent may be used with, however, the following variations:—(1) The transfer will be to the trustees for the residue of the

VII. INSTRUMENT OF TRANSFER.

VII. INSTRUMENT *of* TRANSFER *of a* LOT *on a* BUILDING ESTATE *when a* BUILDING SCHEME *has been* FILED.

[*Heading as in Precedent I.*]

[*Date.*] In consideration of —— pounds [£——], I [*vendor*], of, &c. [as beneficial owner], hereby transfer to [*purchaser*], of, &c. [in fee simple], the land shown and edged with red in the accompanying plan, and described in the schedule hereto, being Lot No. —— referred to in the building scheme No. ——, dated the —— day of ——, and filed in the registry, subject to the exceptions and reservations specified in the first schedule to the said scheme, with the benefit of the easements specified in the second schedule thereto, and subject to and with the benefit of the covenants and conditions specified in the third schedule thereto, so far as the same respectively relate to the said lot: AND the said [*vendor*] and [*purchaser*] hereby apply to the Registrar to enter on the register such of the said exceptions and reservations, easements, rights, and conditions as are capable of registration (*l*).

Sealed, signed, and delivered, &c.

---

term of the registered lease. (2) The following clause will be inserted after the habendum:—

"AND the said A. B. [*tenant for life*] hereby consents to the entry of the said C. D. and E. F. [*trustees*] on the register";

and (3) the application as to restrictions will run

"AND we the said C. D. and E. F. (with the consent hereby testified of the said A. B.) hereby apply for an entry on the register of the following restriction."

(*l*) See notes (*b*) and (*c*) on pp. 666, 667, *ante*.

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